

REPORTER'S RECORD

74145

VOLUME 29 OF 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT

VS. : DALLAS COUNTY, TEXAS

JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney
Crowley Criminal Courts Building
Dallas, Dallas County, Texas 75207
Phone: 214-653-3600

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550
MS. MARY MILLER, A.D.A., SBOT # 21453200
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 25th day of April, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer
assisted transcription.

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NO EXHIBITS THIS VOLUME

1 P R O C E E D I N G S

2 THE COURT: Good morning. Please have a seat.
3 Welcome. May I ask you to raise your right hand and again be
4 sworn in.

5 (Venireperson additionally sworn.)

6 VENIREPERSON: Yes, sir.

7 THE COURT: Thank you. You may lower your
8 hand.

9 Let me introduce to you again those whom we see
10 seated at counsel tables. Beginning to the far left, we have
11 a senior prosecutor with the Dallas District Attorneys
12 Office, lead counsel for the State, the Honorable Greg Davis.

13 MR. DAVIS: Good morning. How are you?

14 VENIREPERSON: Fine.

15 THE COURT: He is joined as co-counsel in this
16 matter by the Chief Prosecutor assigned to this court by
17 Dallas District Attorney Bill Hill. Her name is Ms. Mary
18 Miller.

19 MS. MILLER: Good morning.

20 VENIREPERSON: Good morning.

21 THE COURT: Moving on to the next table, we
22 begin first with two attorneys representing the accused or
23 the defendant. We begin first with Ms. Jennifer Balido.

24 MS. BALIDO: Good morning.

25 VENIREPERSON: Good morning.

1 THE COURT: Seated next to Ms. Balido is the
2 Honorable Michael Byck. Mr. Byck is a board certified
3 criminal law specialist, also present on behalf of the
4 defendant who is seated next to him, Mr. Jedidiah Isaac
5 Murphy.

6 THE DEFENDANT: Good morning.

7 VENIREPERSON: Good morning.

8 THE COURT: The third attorney representing
9 Mr. Murphy who's not here with us this morning, she is
10 addressing other matters as relates to this trial outside the
11 courthouse. Her name is Jane Little.

12 Mr. Gwaltney, we anticipating completing this jury
13 selection stage in the next couple of weeks or so, though
14 testimony will not again until Tuesday, May 29th. The day
15 before, Monday before, United States Congress has determined
16 that Memorial Day will be celebrated this year in the
17 country.

18 Do you know of any reason why your schedule could
19 not be altered such to make you available to return if
20 selected as a juror on May 29th and be down here for anywhere
21 from five to maybe eight days?

22 THE DEFENDANT: Five to eight days?

23 THE COURT: That's how long the trial will
24 last.

25 VENIREPERSON: I don't think I can take off

1 work five to eight days.

2 THE COURT: Why not?

3 VENIREPERSON: ' Because I work nights. And we
4 don't really have that many people to replace me.

5 THE COURT: Will you let me see if I could get
6 with the Exxon people and see if we can work something out
7 for you?

8 VENIREPERSON: Yeah, I guess.

9 THE COURT: I'll do my best. We will proceed
10 with the --

11 MR. DAVIS: We agree.

12 THE COURT: Sir?

13 MR. BYCK: We have an agreement.

14 MR. DAVIS: We have an agreement, Your Honor.

15 THE COURT: Okay. Mr. Gwaltney, go back to
16 work.

17 VENIREPERSON: Thank you.

18 MR. BYCK: You're welcome, Mr. Gwaltney.

19 (Venireperson brought into the courtroom.)

20 THE COURT: Good morning, Ms. Chandler. Ask
21 you to raise your right hand and be sworn in.

22 (Venireperson additionally sworn.)

23 VENIREPERSON: Yes.

24 THE COURT: Thank you. You may lower your
25 hand.

1 Let me reintroduce the individuals who we see seated
2 at the counsel table. Though they have been previously
3 introduced, it's been a little while so let me refresh your
4 memory if I may.

5 VENIREPERSON: Okay.

6 THE COURT: Beginning at the table to the far
7 left, we have lead prosecutor for the State in this
8 particular case, the Honorable Greg Davis.

9 MR. DAVIS: Good morning.

10 THE COURT: One of the senior prosecutors in
11 the Dallas District Attorneys Office at the present time.

12 He is assisted by co-counsel, the Chief Prosecutor
13 assigned to this the 194th District Court, the Honorable Mary
14 Miller.

15 MS. MILLER: Good morning.

16 THE COURT: Moving on to the next table, we
17 have first two of the three attorneys representing the
18 defendant. We begin first with the Honorable Jennifer
19 Balido.

20 MS. BALIDO: Good morning.

21 THE COURT: Seated next to Ms. Balido is a
22 co-counsel, a board certified criminal law specialist, so
23 designated by the State Bar of Texas, the Honorable Michael
24 Byck.

25 MR. BYCK: Good morning, Ms. Chandler.

1 THE COURT: Seated next to Mr. Byck, opposite
2 Ms. Balido, is their client, the accused, the defendant, if
3 you will, Jedidiah Isaac Murphy.

4 THE DEFENDANT: Good morning.

5 THE COURT: There is a third attorney involved
6 in this matter on behalf of the defense not present with us
7 this morning. She is addressing some pertinent matters that
8 relates to this case outside the courthouse. Her name is
9 Jane Little.

10 Ms. Chandler, I note that your home address is in
11 Garland. Case involves a woman whom I understand the
12 evidence will show lived in Garland by the name of Bertie
13 Cunningham. Did you follow that case at all when --

14 VENIREPERSON: No.

15 THE COURT: -- the news accounts, be they
16 radio or television or the newspapers handled it?

17 VENIREPERSON: Not that I recall.

18 THE COURT: Okay. Fine. Ms. Chandler, we
19 anticipate completing this jury selection process in the next
20 couple of weeks.

21 VENIREPERSON: Uh-huh.

22 THE COURT: After which the attorneys will
23 narrow the list down to those 12 that will be jurors in the
24 case. Anticipate that the testimonial or the evidence stage
25 of the trial will begin on Tuesday, the 29th of May. The day

1 before Congress has determined Memorial Day will be
2 celebrated, otherwise we'd start on the 28th. But for that
3 fact it will start on the 29th. The attorneys and I
4 anticipate that the trial will last anywhere from five to
5 maybe eight days, depending upon how long the jury may
6 deliberate.

7 VENIREPERSON: Uh-huh.

8 THE COURT: Do you, Ms. Chandler, know of
9 anything in your schedule that could not be rearranged or
10 altered such that if you are a juror would prevent your
11 coming back to participate as a juror in this case?

12 VENIREPERSON: No. School will be out.

13 THE COURT: Ms. Chandler, you will know before
14 you leave us this morning whether or not you remain under
15 consideration. Remind you, as I did the other jurors when
16 you were back here a couple of weeks ago, no right or wrong
17 answers to their questions as long as they're truthful and we
18 have no reason to believe that you will be utterly candid
19 with yourself and therefore with us with regard to their
20 questions.

21 Are you ready to go?

22 VENIREPERSON: I guess.

23 THE COURT: Relax. They will not be asking
24 you any Rambo type -- all this horror stories you hear about
25 lawyers grilling people, no. You will find them to be

1 extremely civil and courteous. And if not, I have two
2 bailiffs that will take care of them, I assure you.

3 VENIREPERSON: Good.

4 THE COURT: So relax as much as you can. We
5 will proceed with the State as required by law, the Honorable
6 Greg Davis.

7 Mr. Davis, Mrs. Chandler.

8 MR. DAVIS: Thank you. May it please the
9 Court.

10 MARILYN CHANDLER

11 was called as a venireperson by the Court and, after having
12 been first duly sworn, testified as follows:

13 Voir Dire Examination

14 By Mr. Davis:

15 Q. Good morning, Ms. Chandler. How are you?

16 A. Fine.

17 Q. Ms. Chandler, just looking at your questionnaire
18 here I was curious, see you're a librarian, Garland School
19 District?

20 A. Yes.

21 Q. Are you assigned to any particular school?

22 A. I was at North Garland High School for 20 years, but
23 for the last three years I've been elementary librarian and
24 then I travel to the largest libraries and help them out.

25 Q. Okay. The reason I ask I went to that school

1 district, and it's been a few years since I've been there,
2 but I was at Williams Elementary. I don't know if you're
3 familiar with that, then Sam Houston and Garland High School,
4 so you may have stocked my library for all I know.

5 A. I may have.

6 Q. Ms. Chandler, let me just ask you or tell you, what
7 we're doing here is obviously we're trying to find 12 people
8 who can be fair to both sides in this case. And we're
9 looking for people who have the ability to make their
10 decisions based upon the law in this case and the evidence
11 that they hear in this case. That's very important. If
12 you're chosen to sit in -- on this jury, you'll take an oath
13 which will require you to render a true verdict according to
14 the law that Judge Entz gives you in this case, as well as
15 the evidence that you hear in this case.

16 Sometimes people come down here and they have
17 opinions about these matters. I would expect people to have
18 opinions about the law. I would expect people to be in favor
19 of law enforcement, hopefully. And sometimes people have
20 very strong feelings, and that's fine. I want you to know
21 that. Sometimes those opinions may come in conflict with
22 what the Judge's instructions will be.

23 Let me give you a couple of examples what I'm
24 talking about. Sometimes people come down here and they say,
25 you know, there are just too many technicalities in the law.

1 There are too many loopholes in the law. Well, you see, all
2 of those rules are there for a reason. We as attorneys know
3 what those rules are. Judge Entz knows what they are. I'm
4 prepared to try this case according to all those rules, even
5 if some people, you know, may feel that they are
6 technicalities.

7 Those rules are set in place to make sure that this
8 man over here receives a fair trial, and that's a very
9 important thing obviously. We're talking about possibly
10 taking his life. I would hope that these proceedings would
11 be fair. I've tried a death penalty case with Judge Entz
12 before, so I know that he's going to enforce the rules
13 fairly. He will insure that Mr. Murphy receives a fair
14 trial.

15 I want to go through some of those rules with you,
16 just explain them to you. I think that you've already sat on
17 a jury before, haven't you?

18 A. Yes.

19 Q. So you're probably familiar with a lot of these, but
20 just to be safe --

21 A. No, it's been awhile.

22 Q. -- just to be safe, let's go through some of them
23 again. The first rule is this, all defendants, including
24 Jedidiah Murphy, are presumed innocent until proven guilty
25 beyond a reasonable doubt. That means that as he sits here

1 right now, he's presumed innocent even though a number of
2 things have already happened. We know that he's been
3 arrested for capital murder. We know he's been charged with
4 that. We know that he's been indicted by the Dallas County
5 grand jury for capital murder. We're about halfway through
6 jury selection here. And yet as he sits here right now, he's
7 still presumed innocent. That presumption is so strong that
8 if we were to stop the proceedings right now, if I did not
9 put on any evidence, that presumption by itself would be
10 strong enough that a jury would be required by law to find
11 him not guilty based on that presumption alone.

12 I know in your questionnaire, and I've seen this
13 before, but, you know, we ask you if someone is accused of
14 capital murder should they be required to prove their
15 innocence. And you said you agreed with that statement. And
16 I kind of understand what you're talking about. But again,
17 the law says this. The law says this man down here is not
18 required to do anything. All he's required to do is show up
19 everyday. His attorneys aren't required to do anything
20 either. And that's because the burden of proof is always
21 with this table right over here, always. They don't have to
22 show anything. They don't have to do anything. They don't
23 have to prove anything. It's not a matter where he has to
24 prove his innocence. I have to prove his guilt. And
25 that's -- that's the burden, and I understand that. Because

1 we brought the charges, we have to do the proving. If we
2 fail to meet our burden of proof, a jury has to find him not
3 guilty whether he does anything or not. I mean, he could sit
4 over there and doodle. He could work crossword puzzles. His
5 lawyers could do the same thing. They won't because they're
6 fine attorneys, but in theory they could do that. And if I
7 failed to meet my burden of proof, that's what you look at.
8 You look at what I presented, not what they presented, and
9 determine did the State prove their case or not.

10 Do you feel like you can give this man his
11 presumption of innocence in this particular type of case?

12 A. Yes.

13 Q. Okay. If he does nothing, you know, and for
14 whatever reason you feel like I didn't quite prove my case
15 beyond a reasonable doubt, even if he does nothing, can you
16 still say not guilty if I do not meet my burden of proof in
17 this case?

18 A. Say that again.

19 Q. All right. Again, I have to prove my case beyond a
20 reasonable doubt. If I fail to do that --

21 A. Okay.

22 Q. -- if I don't put on enough evidence to persuade you
23 that this man is guilty, can you find him not guilty, even if
24 he sits there and does absolutely nothing?

25 A. Yeah.

1 Q. Again, because he's not required to do anything. I
2 understand that.

3 Here's a second thing that is important. He has a
4 right to remain silent. Again, it goes down to he doesn't
5 have to prove his innocence. He doesn't have to do
6 anything. I've been a defense attorney before. I've
7 represented individuals. There's a number of reasons why
8 someone may not testify. They may not speak English well.
9 They may stutter in front of people. You know, there's a
10 host of reasons why somebody may not get up there and
11 testify. I know that from talking to other jurors sometimes
12 they'll say, well, if I was accused of something like that,
13 I'd sure want to have my say about it. I'd want to get up
14 there and tell my side. And I think that's normal, but I'm
15 just saying the law would look at it differently. And the
16 law would say if you're a accused of a crime, you don't have
17 to get up there, no one can force you to testify. And if you
18 don't testify, the Judge would say the jury cannot hold that
19 fact against a defendant. They can't go back to the jury
20 room and wonder -- I wonder why he didn't testify. I wonder
21 what he would have said. He's probably hiding something.
22 I'll hold that against him, or I'll help the State prove his
23 guilt.

24 If this man doesn't testify, can you follow the law
25 and can you assure us that you won't hold that against him?

1 A. Yeah. I don't know that I would want to testify,
2 so -- yeah.

3 Q. Okay. Fair enough. Here's another requirement.
4 That is that I have to prove his guilt beyond a reasonable
5 doubt. Essentially I've got to prove what's in the
6 indictment. That indictment is a piece of paper that tells
7 me what I have to prove in this case. It tells Mr. Murphy
8 what he's been charged with in this case. There's several
9 things that I have to prove. All of them are important.

10 One of the things that I have to prove is that this
11 offense happened in Dallas County, Texas. Now, that's one of
12 those things again that may seem like a technicality, but
13 it's not. And again, I understand the requirement. It's
14 just as important that I prove that element as it is to prove
15 that this man down here is the person who did the killing. I
16 want to give you an example, just to show you how important
17 that is.

18 Let's say I put on a capital murder case, and I'm
19 going to make this extreme for a reason. Okay? It doesn't
20 mean that this is what will happen here. Let's say that I
21 have a case, Ms. Chandler, and in the case I show you that an
22 individual went out to a church and fire bombed that church,
23 killed a hundred people inside that church, meant to do every
24 bit of it. And there's no doubt when you get down there to
25 the trial that he did it. I mean, you hear enough evidence

1 to show that -- excuse me, again, that he did the crime,
2 there is no doubt, and yet you have some doubt about whether
3 it happened in Dallas County or not. Okay. So you're
4 looking at a defendant who is dangerous, someone who's fire
5 bombed a church, someone you may despise, but let's say for
6 whatever reason that the State is unable to prove that it
7 happened in Dallas County. Maybe they just don't ask the
8 question. Maybe the church was in Dallas County, but no one
9 ever asks the question. Or maybe the church turned out to be
10 in Kaufman County or some other county. But for whatever
11 reason the State can't prove that, so when you go back to the
12 jury room what do you have? Well, you've got a Judge that's
13 going to give you some instructions, and he'll tell you that
14 if the State fails to prove that this offense happened in
15 Dallas County, Texas, if they prove everything else, but they
16 fail to prove that fact, you've got to say not guilty.

17 Now, when you say not guilty, you know in your heart
18 of hearts you're going to let a very dangerous man go free.
19 Maybe there's some statement that he's given to the police in
20 which he says, you know, if I ever get out, I'm going to the
21 first church that I find and I'm going to blow it up and I'm
22 going to wait until Sunday morning before I do it because I
23 want to kill as many people as I can find. And you know
24 that. So you know you're going to let a very dangerous man
25 go free. He's going to walk out of the courtroom right after

1 you do, but you also know this, that the oath requires you to
2 follow the oath. And the law says if they don't prove Dallas
3 County, you have to say not guilty. That's one of those
4 things we were talking about where your emotions or feelings
5 may come in conflict with the law.

6 Now, some people say I don't care what the law is,
7 I'm not going to follow the law. I'm not going to let a
8 dangerous man go free, not me.

9 Let's just make it even worse for you. Let's say
10 all the other 11 people back there with you are saying forget
11 the law, we're not letting anyone dangerous go free either.
12 You do what you want to do, but not us. You're the lone
13 person who's saying back there, but the law says if they fail
14 to prove Dallas County, you're to say not guilty.

15 Now, what are you going to do? Are you going to
16 follow the law, say not guilty, or are you going to go along
17 with the crowd and say guilty?

18 A. I would stay with the law.

19 Q. Yes, ma'am.

20 A. I guess I'd have to go along with it.

21 Q. Okay. Say not guilty?

22 A. Say not guilty.

23 Q. Okay. I would expect you in that kind of case to
24 find that to be a very difficult thing to do.

25 A. Yeah.

1 Q. Very unpleasant thing to do. Again, if you respect
2 the law, if you respect the oath that you've taken --

3 A. Uh-huh.

4 Q. -- you have no other choice but to say not guilty?

5 A. Right.

6 Q. You may blame the State of Texas, you may blame the
7 police officers, they've made a horrible mistake, but if
8 you're going to be true to the law, you have to say not
9 guilty.

10 Let me give you another example. This is going to
11 be another extreme example. Let's say that -- oh, I'll just
12 use myself this time. Let's say that I go out, I'm a fire
13 bug and I hate kids. And I go out to the closest school I
14 can find. Maybe it's in the Garland school district. Maybe
15 it's one of my old schools, and I wait until the busiest
16 period, maybe it's the lunch hour -- again, I burn it to the
17 ground and I kill every child in there. And I laugh and I
18 carry on as I'm going back to my home. No one saw me do it.
19 I got away scot-free, but let's say a couple of days later
20 the police come in contact with me and through whatever means
21 they figure out that maybe I'm the suspect in that case.
22 They bring me down to the police station. They begin talking
23 with me, and I decide, I'll go ahead and give them a
24 confession. They didn't force me to give the confession.
25 They haven't threatened me. They didn't promise me anything

1 and I decided, yeah, I'll go ahead and give it to you. And I
2 proceed to give them a confession. Now, you know, if you've
3 watched these television shows, you're probably familiar with
4 the Miranda warnings, what the police officers have to tell a
5 suspect.

6 Let's say the officer on duty that I talked with
7 means to give me the warnings. He really does intend to.
8 Let's just say he's been working overtime. He's tired.
9 Let's say that he has to tell me four different things, four
10 different warnings. And let's say that he tells me three of
11 those warnings, but he forgets to give me the fourth one.

12 Now, I want to go ahead and give the statement
13 anyway. Let's say that he forgets to tell me I have the
14 right to remain silent. I don't care. I want to go ahead
15 and talk anyway, but he doesn't tell me that warning. He
16 gets down to trial, and he's honest enough to say he just
17 walked in off the streets, I didn't have to apprehend him.
18 He walked to give me the statement. He couldn't wait to give
19 me the statement. But, you know, in all honesty, I didn't
20 give him that fourth statement -- that fourth warning. I
21 gave him three of them. It's clear he didn't want to remain
22 silent anyway, but in all honesty, I did not tell him he had
23 the right to remain silent. You hear the statement, you hear
24 some very grisly details. There's no doubt that I did it.
25 Maybe I'm giving details only the murderer would know. Maybe

1 in the statement again I say, you know, I did it and I'm glad
2 I did it and I'll do it again the first opportunity I get.

3 Here's what the law would say to you there. The law
4 would say that if you have a doubt about whether any of those
5 warnings were given, you have to disregard that statement.
6 That's the law.

7 Now, in this case obviously there's no testimony --
8 there's in fact testimony the fourth warning was not given.
9 Okay. That's before you, and you know that. So there's a
10 reasonable doubt about whether all of them are given. You're
11 required by the law to throw that statement out. The problem
12 with my case is that's all you have to prove my guilt. You
13 know that if you throw that statement out that I've given,
14 and you know it's true. You know every word in there is
15 probably true. If you toss that aside because one warning
16 wasn't given, there's no evidence left against me. It's the
17 same situation as before. You're going to let a very
18 dangerous man walk free. He's going to head out maybe to the
19 first school that he sees and he may do it again. But again,
20 the law says if a warning is not given, you've got to toss
21 this document out. There's nothing else left. The State
22 hasn't met their burden of proof, obviously.

23 Now, the predicament is, let's say all 11 other
24 people again, I'll just put you in the box again, let's say
25 all the 11 others are saying that's a technicality, that's a

1 loophole, that's silly, you know, we all know he wanted to
2 give the statement anyway. It's not even an issue.

3 Right to remain silent. He's the one that initiated
4 the conversation, for goodness sakes. But you're over there
5 saying, you know, but Judge Entz, he said that if we find not
6 all the warnings were given, we've got to toss this thing
7 out. That's what the law is asking us to do. It's asking us
8 to do a very tough thing.

9 I guess the bottom line question is are you going to
10 follow the law in that case, toss it out, and let me walk
11 free, or will you it's a technicality anyway and my
12 conscience isn't going to allow me to let some crazy
13 dangerous person walk free.

14 A. I understand all the ramifications of the law. And
15 I guess I don't agree with all of them, but again, I respect
16 it. I think I would let him go free.

17 Q. Okay.

18 THE COURT: Ms. Chandler, let me make you a
19 little more comfortable. Do you agree with everything in the
20 Internal Revenue code?

21 VENIREPERSON: Pardon?

22 THE COURT: Do you agree with everything in
23 the tax law?

24 VENIREPERSON: In the tax law? No.

25 THE COURT: You follow it though, don't you?

1 VENIREPERSON: Sure.

2 THE COURT: You follow it though, don't you?

3 VENIREPERSON: Oh, yeah, I do, sure. I had to
4 pay a lot this year. I didn't agree with it.

5 THE COURT: This Garland High School graduate
6 makes it touch on a teacher, doesn't he?

7 VENIREPERSON: He does.

8 THE COURT: Teach him well, you reckon?

9 VENIREPERSON: I guess.

10 THE COURT: All right. We'll continue.

11 MR. DAVIS: Okay.

12 Q. (By Mr. Davis) Let me talk to you about another
13 issue. Maybe this will be a bit easier. I'll try to ease up
14 a little bit here. Okay?

15 THE COURT: Please do.

16 MR. DAVIS: Yes.

17 Q. (By Mr. Davis) Here's -- in a murder case, if
18 you -- if you had simply a murder without a capital murder,
19 there's no death penalty, Ms. Chandler. You know, if I
20 turned and I just didn't like Ms. Miller's outfit today and I
21 shot her and I intended to kill her, that by itself is
22 murder, but it's not capital murder because capital murder is
23 always two things. It's always an intentional murder plus
24 something else. In this case it's an intentional murder
25 committed in the course of a robbery or kidnaping. When you

1 combine those two things, you have a capital murder, but if
2 you just kill someone intentionally, that's just murder. You
3 can't get the death penalty for that.

4 A. I know.

5 Q. Okay. You know, there could be a number of other
6 things that go along with an intentional murder. For
7 instance, if you intentionally kill a police officer, that's
8 capital murder. If you intentionally kill a child younger
9 than the age of 6, that's a capital murder. But when we talk
10 about intentional murder, that's not a death penalty case by
11 itself. The range of punishment is very wide. It can range
12 anywhere between 5 years up to 99 years or life in the
13 penitentiary. That's what the law says a jury can assess for
14 a murder case.

15 Intentional murder is just that. It's where I
16 intend to take someone's life, and then I do everything
17 necessary to accomplish that. But again, the range of
18 punishment, 5 years to 99 years or life.

19 Now, the question I'd like to ask you is this.
20 Because the law says to be a qualified juror in that type of
21 case, you have to have an open mind to the full range of
22 punishment if you will. You have to be able to honestly say
23 in a murder case if the facts called for it, you could give
24 as much as life or you can give as little as 5 years,
25 depending on the facts that you hear.

1 In general, let me just ask you, are you the type of
2 person, Ms. Chandler, when you make a decision, that you want
3 to know all the facts before you decide what to do?

4 A. Yeah.

5 Q. Murder cases would be no different. I've had some
6 people that would come down and tell me, you know, if it's an
7 intentional murder, I don't care what the facts are, I'm
8 never ever going to give something as little as 5 years
9 because people who kill don't deserve that. They deserve
10 much more than that. But you have to understand in murder
11 cases -- having tried a few of these myself, every person is
12 different, every defendant is different, their backgrounds,
13 their characters, whether they've been in trouble or not,
14 whether they've lived a spotless life before, that's all
15 different.

16 Can you agree with me that everybody who may be
17 convicted of murder should be looked at as a unique
18 individual, first of all?

19 A. Yeah.

20 Q. Every crime is different. I mean, it could be as
21 extreme as me just hating somebody and intended to kill them
22 or it could be a number of other situations that could be an
23 intentional murder, too. There could be a lot of different
24 motivations for that. But here is the key. If you heard a
25 murder case, an intentional murder case, and we're not

1 talking about an accident, we're not talking about
2 self-defense, we're not talking about someone being insane,
3 that somebody who intended to take a life for whatever
4 reason. If you heard that kind of case and you -- after you
5 heard all the facts, you thought, you know, I never did think
6 about that before, but, you know, now that I've heard that
7 case, I truly think that that defendant right there should be
8 punished by 5 years in the penitentiary. Maybe it's a case
9 where you said I didn't really think I'd hear that kind of
10 case but I did and I'm convinced now that he deserves 5
11 years. Could you give five years? That's the key.

12 A. Yeah, I guess so.

13 Q. Okay. And here's the thing about it. You don't
14 have to be able to tell us what kind of case that would be.
15 And frankly, you may be sitting there thinking it would be a
16 rare day when you thought that 5 years would be appropriate.
17 That's okay, too. But you see, we could sit here and I could
18 give you a number of examples of things where you said, well,
19 you know, now that I see it -- one example would be, just
20 like I said, it's just a cold-blooded killing. That could be
21 an intentional killing. Let's say my motivation is far
22 different. Let's say I come home and I find somebody has
23 come into my neighborhood and sold crack cocaine to my
24 14-year-old son and got him hooked on crack cocaine. And I
25 find out about it. I my son is now hooked on crack, and his

1 life is ruined. And I decide to go out there and take
2 justice into my own hands. And I find that crack dealer and
3 I intend to kill him. I've done nothing else in my entire
4 life that's wrong. See, that's an intentional killing. I
5 intended to kill a crack dealer for instance. So there could
6 be a lot of situations. That's my point, that you may not
7 have thought of before. But I hear you saying if the facts
8 are there, that's the key. If you think the facts are there
9 that justify a 5-year sentence, that you'll carry through and
10 you will assess a 5-year sentence if you think it's right.

11 Am I correct, there?

12 A. Yeah, I have gotten upset if I read in the paper
13 that it's just a 5-year sentence or something like that, but
14 I don't know the facts.

15 Q. Okay. That's correct. Fair enough. Let's talk
16 then about these special issues for a little bit because this
17 is really at the heart of the punishment phase of the death
18 penalty case. If you find someone guilty of capital murder,
19 Ms. Chandler, then we go to a punishment phase and then both
20 sides are allowed to offer more types of testimony.
21 Generally it concerns a defendant's background, his
22 character, what he's done or not done in the past. And after
23 we finish all those facts, then we ask you to answer these
24 special issues.

25 Now, Special Issue Number 1, I believe the Judge has

1 already told you there's a presumption there that it should
2 be answered no. It's kind of like the presumption of
3 innocence. Even though he's been arrested and charged and
4 indicted, he's still presumed innocent. Even though he's
5 been found guilty of capital murder, that issue's still
6 presumed to be answered no.

7 Now, some people have a problem with that. And some
8 people say, if I find someone intentionally killed a woman
9 during the course of a kidnapping or a robbery, that's the
10 type of person in my mind who will always be a threat to
11 society. I don't care what the facts about his background
12 are. I don't care what he did why it. That automatically
13 always will answer Special Issue Number 1 for me, and I'm
14 going to answer yes regardless of what the facts are.
15 There's a problem obviously there because they're not waiting
16 to hear all the facts before they answer Special Issue Number
17 1.

18 What the law would ask to you do is this, wait until
19 you hear all of the facts. Don't answer Special Issue Number
20 1 automatically one way or another just because you found
21 someone guilty.

22 Let me give you an example. Okay? And this
23 would -- again, this is an extreme example. Let's say that
24 I go in and I rob a store and I shoot the clerk during the
25 course of that robbery. I've committed a capital murder.

1 Let's say I've committed a hundred prior robberies. I'm
2 known to be violent, always have been violent. And as I walk
3 out of that store, I'm laughing about killing that clerk, but
4 I don't notice the police car coming around the corner
5 answering that silent alarm. That police car runs me over,
6 I'm rendered a quadriplegic. I don't have the use of any of
7 my limbs anymore. I'm going to be in a wheelchair sucking a
8 straw the rest of my life.

9 Now, you see that's an extreme example of a
10 situation where you have no doubt at all that I'm guilty of
11 capital murder. Pretty easy to find me guilty. But now you
12 hear about the fact that I'll always be in a wheelchair, I
13 can't move my limbs, I'm helpless, maybe I can't even speak
14 without the aid of a computer. Am I really a threat to
15 anybody? You see how I can be guilty and yet you might not
16 think I'm going to constitute a continuing threat to anybody
17 for the rest of my life, I'm confined to a wheelchair. But
18 that's just an example.

19 So my ask to you on Special Issue Number 1 is this,
20 can you wait for all the facts before you answer Special
21 Issue Number 1?

22 A. Yeah.

23 Q. Okay. Let's talk about some of these words for just
24 a moment. The word "probability." The word "probability" is
25 just that. It's not just a possibility. If it was a

1 possibility, the legislature would have just X'd that word
2 out and said possibility. The legislature would have said,
3 you know, whether there's a possibility the defendant would
4 commit. They didn't say that, clearly. They could have said
5 whether there's a chance the defendant would commit it. They
6 didn't use that word. They used a word that's higher than
7 that. It's a probability.

8 A lot of jurors tell me, Ms. Chandler, probability
9 means something is more likely than not going to happen. If
10 I said it's probably going to rain tomorrow, you know, that
11 has a certain meaning I'm sure. A lot of jurors tell me that
12 that means that it has to be more likely than not going to
13 rain. Has to be at least 51 percent of a chance, if you
14 will, that it's going to rain. Anything less than that and
15 it's just possible. It's more likely than not that it's not
16 going to rain.

17 Can you see that?

18 Now, when you look at probability, are you going to
19 consider it to be a probability or are you going to consider
20 it to be something less like a chance or a possibility?

21 A. I don't know if I'm understanding what you're asking
22 me.

23 Q. Okay. Well, what I'm saying is probability
24 obviously means something more than a possibility. Do you
25 see the distinction between those two things?

1 A. Yes.

2 Q. What I'm saying to you is, are you going to consider
3 it to be a probability like it's written, or are you going to
4 consider it to be something less than that?

5 A. I guess like it's written.

6 Q. Okay.

7 THE COURT: Ms. Chandler, let me see if I can
8 help if I may. What would you consider to be a word or a
9 phrase that would be a synonym for probability?

10 VENIREPERSON: Likely to happen, I guess.

11 THE COURT: Likely to happen.

12 VENIREPERSON: Uh-huh.

13 MR. DAVIS: Okay. Thank you.

14 Q. (By Mr. Davis) All right. Let's look at criminal
15 acts of violence. Criminal acts of violence, again, the key
16 word there is violence. Most people tell me criminal acts of
17 violence have to be aimed against another person. You know,
18 if I go out and jaywalk today, I've committed a crime, but
19 it's not a crime of violence, is it? No one else is
20 involved. Robberies, assaults, other murders, kidnapping
21 where someone is actually harmed or put in threat of harm
22 most people tell me that they consider those to be acts of
23 violence.

24 Would you agree with that, or would you include
25 something else?

1 A. No, I agree with that.

2 Q. Okay. Let's talk about Special Issue Number 2 for a
3 moment, Ms. Chandler, kind of in conclusion here. Special
4 Issue Number 2, here's where you are. You've already decided
5 the person is guilty. You've already decided beyond any
6 reasonable doubt that that person is a continuing threat to
7 society. You know he's a danger. Special Issue Number 2 is
8 going to ask you to do something maybe a little bit
9 difficult, but it's going to say forget about everything
10 else. Even if you think that man is as dangerous as they
11 come, can you take another look at all of the evidence and
12 determine if there's something in that evidence that shows
13 you the man should get a life sentence instead of a death
14 sentence.

15 Again, some people have a problem. And the problem
16 is they say if I think someone is that dangerous, I don't
17 care what they show me, I don't care what the evidence is,
18 I'm never giving a life because I'm not taking a chance with
19 him victimizing anyone ever again. They're entitled to think
20 that way, but that's not the way the law asks them to look at
21 that question. The law says regardless of how dangerous he
22 is, look at everything again. The reason they do that -- let
23 me give you an example. We have that question because of a
24 man who was mentally retarded. And the court said we want
25 the jury to be able to look at that fact and decide if maybe

1 a life sentence is more appropriate than a death sentence.

2 Let's say you had a 40-year-old man who was severely
3 mentally retarded. He knows right from wrong. He knows that
4 when he killed that person it was wrong to do that. But
5 let's say he's working at the equivalent of a 4-year-old or
6 5-year-old, kindergartner. You may think he's dangerous.
7 You may think he's guilty, but do you really want to sentence
8 that man to death? There may be something in his past that
9 is so -- so shocking, maybe about the way he was raised or
10 his -- whatever it may be where you say to yourself, oh, he's
11 a danger, but there's something in his background, something
12 about this man's mental history that tells me that his
13 punishment should be reduced to a life sentence.

14 Do you think that you'd be able to do that, go
15 through that kind of examination of the evidence, or do you
16 think you'd just automatically say if he's a danger, he's
17 going to die, period?

18 A. No, to me a life sentence is almost as bad as the
19 death sentence. I don't know that I would -- no, I could do
20 that.

21 Q. Okay. I guess the bottom -- bottom line question --
22 this will be my last question for you.

23 A. Okay.

24 Q. You're probably happy about that. I'm sorry I've
25 had to ask you so many tough questions today. But if you got

1 down to a murder -- a capital murder case where you found the
2 man guilty, you thought he was a danger, and if you saw
3 something, whatever it may be, and you said to yourself
4 that's the thing that I needed to say life sentence instead
5 of death sentence, could you say I'm going to give him life?

6 A. Yeah.

7 Q. Ms. Chandler, I appreciate your time. I appreciate
8 your patience with me, and I appreciate your answers and your
9 honesty here. That's really what we do depend upon.

10 THE COURT: Ms. Chandler, would you like to
11 take a stretch break or rest room break before we continue?

12 VENIREPERSON: No, I'm fine.

13 THE COURT: Do you want to proceed? You're
14 the boss. Continue, get it over with.

15 The Honorable Jennifer Balido.

16 Cross-Examination

17 By Ms. Balido:

18 Q. Ms. Chandler, as the Judge has told you, my name is
19 Jennifer Balido. And along with Mike Byck and also Jane
20 Little, we represent this man over here, Jedidiah Isaac
21 Murphy. We call him Jim. That's what his family calls him.

22 And I want to talk to you a little bit about your
23 answers on the questionnaire and then your answers to Mr.
24 Davis because when I first read your questionnaire, it seemed
25 like to me that you were an eye-for-an-eye person, that

1 basically in your questionnaire you stated that I believe if
2 someone planned and willingly took another life, they don't
3 deserve life themselves. And then you also said on page 2
4 that the best argument in favor of the death penalty is a
5 person should be responsible for their actions, why should
6 they be allowed to live if they have taken someone else's
7 life.

8 Can you kind of tell me if your opinion is the same
9 today as it was back when you filled out this questionnaire?

10 A. I believe in the death penalty, but I believe in
11 looking at the facts, too.

12 Q. Okay. And you also said when you were talking to
13 Mr. Davis and he was explaining you -- to you the difference
14 between capital murder and murder that --

15 A. I didn't know the difference.

16 Q. Okay.

17 A. I really didn't know.

18 Q. Right. And you said you didn't know the difference
19 and you didn't know that just -- if there's just a murder, an
20 intentional murder like he described shooting Ms. Miller,
21 that you didn't know that you couldn't get the death penalty
22 for that.

23 A. Uh-huh.

24 Q. Okay. If -- do you think that the death penalty
25 should be available for that type of crime?

1 A. I don't know.

2 Q. Okay. Let me just kind of go over some of the
3 things that you've talked to Mr. Davis about. And I'm kind
4 of one of those people that I want to hear more about what
5 you have to say, you know, because I -- I don't care if you
6 agree with the law, I really don't. I just want to know what
7 you really and truly believe.

8 When we're talking about capital murder and we're
9 talking about murder plus, we're talking about that you -- as
10 it's in that indictment, that you cause the death of another
11 person in the course of another criminal offense, in this
12 case kidnapping or robbery. Okay? And what we're talking
13 about in this case is that Mr. Murphy had the specific intent
14 to kill somebody. Okay? I'm kind of going all around. Let
15 me see if I can get my thoughts together.

16 Let's say that I've just had it with Mr. Byck.
17 Okay? He's driving me crazy, and his handwriting is
18 horrible. And as a fellow nice handwriting person, you know
19 that that can drive people insane sometimes. But let's just
20 say I've had it with him. I go out and I buy a gun. I go
21 out and buy bullets. And I come into the courtroom with this
22 gun in my purse. I pull out a gun, and I shoot Mr. Byck.
23 When I pull out that gun, I'm not trying to scare him. I'm
24 not saying if you write another note to me, I'm going to kill
25 you. I don't threaten him with it. I don't shoot him in the

1 foot because I want to hurt him. I shoot him because I want
2 to kill him. Okay? I have the specific intent to kill him.
3 It's not an accident. You know, we weren't playing with it.
4 We weren't playing Russian roulette or anything like that.
5 But I have the specific intent to pull out a gun, do the
6 thing to cause his death. And that's the kind of intent that
7 the State must prove beyond a reasonable doubt, if they can,
8 before you can find Mr. Murphy guilty of capital murder.
9 Okay? And when we're talking about that sort of specific
10 intent, do you think someone that can form that specific
11 intent to kill somebody is always going to be a future danger
12 to society?

13 A. I don't know. I can't imagine being angry enough to
14 kill someone, but I guess there are extenuating circumstances
15 and it could be a one-time -- one-time thing.

16 Q. Okay. Do you think when you're thinking about an
17 intentional killing and in this case what we're talking about
18 is that -- that Mr. Murphy is accused of intentionally
19 killing Bertie Cunningham by either shooting her in the head
20 or drowning her in water in the course of a robbery or a
21 kidnapping. If you think you'd find somebody guilty of that
22 type of offense, do you think looking at Special Issue Number
23 1, do you think that you could ever say no, I don't think
24 that he's going to be a future danger to society?

25 A. I don't think that everybody that has committed a

1 criminal act is going to continue being a criminal.

2 Q. Okay. You think that everyone that's committed a
3 capital murder is going to continue to commit criminal acts
4 of violence?

5 A. Not necessarily.

6 Q. Okay. And when we're talking about Special Issue
7 Number 1 -- and I'll kind of do it backwards since we're
8 already here. When we're talking about Special Issue Number
9 1. The State has the burden of proof on that issue. They
10 must prove to you beyond a reasonable doubt that there is a
11 probability that the defendant would commit criminal acts of
12 violence that would constitute a continuing threat to
13 society. Okay? That is their burden and their burden alone.

14 Beyond a reasonable doubt. Mr. Davis didn't talk
15 about it very much, but it's important so I'm going to.
16 Beyond a reasonable doubt, the burden of proof is the level
17 of proof of the believable evidence that they have to satisfy
18 before, number one, you can find him guilty of capital
19 murder, and, number two, before you can answer Special Issue
20 Number 1 yes.

21 We used to have a definition about beyond a
22 reasonable doubt. Now we don't. Basically whatever is in
23 the juror's mind which is kind of hard to explain because,
24 you know, it's kind of -- you won't know it unless you see
25 it. But I think we can all agree that proof beyond a

1 reasonable doubt means that the State removes all reasonable
2 doubt from your mind. Okay. And it becomes important
3 because there's -- when we're talking about criminal law,
4 we're talking about whether or not the State can prove its
5 case. A lot of times jurors feel like, you know, it's their
6 job to determine did he do it or did he not do it. And
7 that's not really the case, and that kind of gets stuck in
8 some people's craw. The issue is can the State prove it
9 beyond a reasonable doubt. Okay.

10 How do you feel about that being the question and
11 not whether did he do it or not do it?

12 A. I'm not supposed to say whether he did it or whether
13 he didn't do it? I'm just supposed to -- if they prove their
14 case beyond a reasonable doubt?

15 Q. Right. And see -- and that's kind of how Mr. Davis
16 was talking about -- about, you know, if they prove
17 everything and you know that he did it, but they don't prove
18 Dallas County, well, they haven't proved their case beyond a
19 reasonable doubt.

20 Do you see how kind of when you look at it that way,
21 all the things that Mr. Davis was talking about kind of
22 become more real? How do you feel about that?

23 A. Well, what are you asking me? Can I say guilty or
24 not guilty?

25 Q. Well --

1 A. Is that what you're saying?

2 Q. -- let me -- I'm sorry. I'm being so confusing this
3 morning. It's my fault. Sometimes I do this and it's hard
4 for me to get back on track. Let's say that you're sitting
5 on this case, and the State presents its case -- I mean,
6 presents its case, presents all the evidence they have and
7 they rest and close. And you get back there in the jury room
8 and you say, you know, I know that he did it, everything
9 points to him that he did it, but the State just didn't prove
10 its case beyond a reasonable doubt. Okay. They didn't prove
11 that it was in Dallas County, State of Texas, or they didn't
12 prove that it was committed in the course of a robbery --
13 well, that's a bad example. They didn't prove that he
14 intentionally caused the death of this individual. Okay.
15 They just didn't prove it. You know, but I think he's
16 guilty, but the State didn't just prove it. Just didn't
17 prove it. The Judge says that if the State doesn't prove its
18 case beyond a reasonable doubt, you have to find him not
19 guilty.

20 How would that make you feel?

21 A. I guess I could do it.

22 Q. But it probably wouldn't make you feel --

23 A. No, I probably wouldn't be very happy about it,
24 but --

25 Q. Okay. And it doesn't make jurors feel very happy

1 because I've had jurors both when I was a prosecutor and as a
2 defense lawyer say, you know, I thought he was a bad person.
3 I thought he was guilty of something, but they just didn't
4 prove their case beyond a reasonable doubt. And it's a hard
5 thing to do, but you think you can do that if the State
6 doesn't prove its case?

7 A. I think so.

8 Q. And when we're talking about beyond a reasonable
9 doubt, we're talking about proof -- well, let me get at it
10 this way. When we're talking about civil cases, when people
11 are just fighting about money --

12 A. Uh-huh.

13 Q. -- the proof in that case is more likely than not.
14 Okay. It's called a preponderance of the evidence.
15 Sometimes people say 51 percent. When we're talking about
16 when the State of Texas like the D.A.'s office through its
17 Child Welfare Division wants to take your children away,
18 that's clear and convincing evidence which is some people say
19 75 percent. It's more than more likely than not. It's not
20 as -- it's more than that. It's clear and convincing
21 evidence. Beyond a reasonable doubt is proof such which is
22 more than that. We don't have any kind of numeric value, but
23 it's something more than that. More than just fighting about
24 money, more than taking your kids away. Beyond a reasonable
25 doubt. It's the highest burden because we're talking about

1 the most important things. We're talking about life and
2 liberty.

3 Can you hold the State to its burden of proof on
4 that, with that kind of being an idea of what reasonable
5 doubt is, make their case beyond a reasonable doubt?

6 A. Yeah.

7 Q. And that's the kind of proof that we're talking
8 about also on Special Issue Number 1.

9 Now, Special Issue Number 2, Mr. Davis kind of ran
10 out of time and so I'm going to talk a little bit about that.
11 Special Issue Number 2 is whether taking into consideration
12 all of the evidence, including the circumstances of the
13 offense, the defendant's character and background, and the
14 personal moral culpability of the defendant there is a
15 sufficient mitigating circumstance or circumstances to
16 warrant that a sentence of life imprisonment rather than a
17 death sentence be imposed.

18 Now, you said when you were talking to Mr. Davis,
19 and I was glad to hear you say it, that you thought a life
20 sentence was almost as bad as a death sentence. Is that --
21 is that how you feel?

22 A. To me it is.

23 Q. Okay. And what we're talking about here is we're
24 talking about life confinement in prison.

25 A. Right.

1 Q. And life confinement in prison --

2 A. Is not much of a life.

3 Q. Exactly, is not very much of a life. So I -- do you
4 believe that when we're talking about an intentional murder,
5 we're talking about a capital murder, that both death by
6 lethal injection and life imprisonment are both adequate
7 punishments for that sort of crime?

8 A. Yeah.

9 Q. Okay. Let me talk to you a little bit about Special
10 Issue Number 2. Now, after you've -- when you get to Special
11 Issue Number 2, you've, number one, found him of an
12 intentional -- found him guilty of an intentional murder,
13 plus something else. And, number two, you've answered
14 Special Issue Number 1, yes, that he's going to constitute a
15 continuing threat to society.

16 A. Uh-huh.

17 Q. And then we get to Special Issue Number 2, and it's
18 taking a look at everything. Now, Ms. Chandler, after you've
19 found him guilty and after you've found that he's going to be
20 a future danger, can you look at the case again and look at
21 his -- the circumstances of the offense and the defendant's
22 character and background and the personal moral culpability
23 of the defendant and determine whether or not he should
24 receive a life sentence or a death sentence? Do you think
25 you can do that after finding him guilty and finding that

1 he's a danger to society?

2 A. You're asking me if I can -- what are you asking me
3 exactly?

4 Q. I'm asking you, do you -- do you think that there's
5 anything that you think would be mitigating after finding him
6 guilty of capital murder, of killing this person in the
7 course of a robbery or kidnapping?

8 A. Uh-huh.

9 Q. You've found that the evidence shows you that he's
10 going to be a contributing -- continuing threat to society.
11 Do you think that there's anything that could be shown to you
12 to cause you to answer that question so that he gets life
13 instead of death? Is there anything mitigating?

14 A. I don't really know.

15 Q. Okay. Let me -- let me kind of get at it this way.
16 There -- there are a number of things that have been
17 considered mitigating in the past that jurors have told us
18 that they thought was mitigating. One of the things is what
19 Mr. Davis talked about which was the mental retardation --

20 A. Uh-huh.

21 Q. -- case. And the case that he was referring to, Mr.
22 Penry, he is still on death row and the State is still trying
23 to kill him. And the case is being considered by the United
24 States Supreme Court.

25 Do you think in situations that someone's mental

1 retardation could be mitigating?

2 A. Yeah.

3 Q. What about sometimes people think that mental
4 illness, either schizophrenia or bipolar disorder or
5 something like that or just having some mental problems that
6 weren't ever addressed is sometimes mitigating. What do you
7 feel about?

8 A. I don't think you can condone their actions just
9 because -- or let them off just because of that.

10 Q. Right. And when we're talking about, quote, letting
11 them off, I mean, the decision in this case is not whether or
12 not they're going to go free, but whether it's life
13 imprisonment or the death penalty.

14 Do you think that could be a consideration in that?

15 A. If there is something mental you're saying?

16 Q. If there's something mental, yes, ma'am.

17 A. Huh. I guess it would depend on the degree of the
18 mental retardation or whatever.

19 Q. Okay.

20 THE COURT: Ms. Chandler, what about child
21 abuse? Have you seen the examples in your educational career
22 where you've seen individuals who were sexually or physically
23 abused as children and it affected them adversely as a
24 result? Or have you not?

25 VENIREPERSON: I don't guess I really have

1 personally, no.

2 THE COURT: Are you willing, with regard to
3 Special Issue Number 2, to listen to evidence and determine
4 whether or not, number one, it is true, number two, if it's
5 mitigating, and then decide if as a result of it the
6 defendant should live and not die?

7 VENIREPERSON: I'll listen as carefully as I
8 can.

9 THE COURT: Evidence may show that somebody is
10 a -- has the musical composing talent of a Beethoven or
11 Schumann or Mozart or may have tremendous artistic talent as
12 a Michelangelo, be an absolute international travesty not to
13 permit this individual for the 40 years in the penitentiary
14 to contribute to society. And those are extremes.

15 VENIREPERSON: Yeah.

16 THE COURT: All right. But this -- Special
17 Issue Number 2 is set up for just extreme type situations if
18 they exist. And I'm not saying that every case is extreme,
19 but this is the safety net. Look, because of this, fill in
20 the blanks.

21 VENIREPERSON: You're saying let them go
22 because they have all --

23 THE COURT: Not go, live and not die.

24 VENIREPERSON: Oh, okay.

25 THE COURT: See, when you get to this, they're

1 looking at 40 years or death. Either/or, so they're not -- I
2 mean, this is not a get out of jail free card.

3 VENIREPERSON: Okay.

4 THE COURT: This is a live and not die card.
5 Okay.

6 VENIREPERSON: Uh-huh. Okay.

7 THE COURT: The defense may continue.

8 MS. BALIDO: Thank you, Judge.

9 Q. (By Ms. Balido) And that's what -- I think
10 sometimes people think of mitigation as an excuse or
11 justification or something like that. They think that
12 Special Issue Number 2 is trying to make excuses, and that's
13 not really what it's for. You know, Special Issue Number 2,
14 like the Judge said, it's the decision that someone is going
15 to get life and not death because of some sort of sufficient
16 mitigating circumstance in their background that -- or just
17 something that's in the case that you say, well, you know,
18 this to me means that this person deserves to live and not
19 die. That's basically what it is.

20 Let me -- let me give you an example, and what I'm
21 kind of keying on is the personal moral culpability of the
22 defendant when I'm giving you this example. Let's say that
23 Mr. Byck and I are nonidentical twins. We're born of the
24 same mother who had some alcohol problems and maybe some drug
25 problems while she was pregnant with us. When we're born,

1 she decides that we're just too much trouble and we get
2 adopted out to two separate families. Mr. Byck is adopted by
3 a family who loves children, loves to read to children. It's
4 a house where love is communicated. No violence in the
5 home. No abuse in the home. Goes to good schools with good
6 teachers, finds a couple of those teachers that make a
7 difference in people's lives.

8 A. Uh-huh.

9 Q. And goes off to college and graduates from college.

10 I, on the other hand, am not so lucky. I am adopted
11 into a family where love is not communicated or ever spoken
12 about. We're exposed to violence on TV, exposed to violence
13 between the other siblings in the home, exposed to violence
14 with our parents.

15 A. Uh-huh.

16 Q. Committing violence on each other and on us. There
17 is physical abuse. There is sexual abuse. Those things go
18 untreated. I go to school, but I just kind of go through
19 school without, you know, any real bumps in the road. Never
20 make an impact. No one ever makes an impact on me. And I go
21 off and live my own life.

22 Let's just suppose with this kind of extreme example
23 that we end up -- Mr. Byck and I end up on opposite corners
24 in downtown Dallas and we rob two separate banks unbeknownst
25 to each other. We do the exact same thing. We walk in. We

1 threaten the people in the bank with a gun. We walk out,
2 we're arrested, and we confess. The jury finds us guilty,
3 and the jury is supposed to assess our punishment in separate
4 trials.

5 Do you think that we should be sentenced the same or
6 differently based on our character and background?

7 A. I probably would say the same because a lot of
8 people have bad backgrounds but have risen above it.

9 Q. Right.

10 A. I don't think that's -- I would probably say the
11 same.

12 Q. Okay. Let me ask you, do you think that the -- our
13 different characters and our different backgrounds should
14 have any impact on how the jury views that case or how you as
15 a juror would view that case, or do you think you do the
16 crime, you know, you do the time?

17 A. Well, I think I can weigh it both ways, but I still
18 don't think that your background has a lot to do with how you
19 turn out.

20 Q. Okay. What do you think has a lot to do with what
21 you turn out, if your background doesn't have very much to do
22 with it?

23 A. Well, now that's hard to say. I know a lot of
24 people blame their background on their parents and -- for
25 their actions in their adult life, but I also know that a lot

1 of people -- and I don't know how they've done it, but have
2 risen above that and have made something of themselves.

3 Q. Right. Do you think that you could consider -- when
4 we get to Special Issue Number 2, that you could consider the
5 defendant's character and background in answering Special
6 Issue Number 2?

7 A. Say that again.

8 Q. Do you think that you could -- knowing how you feel
9 about, you know, people and their background and how they've
10 risen above it, do you think you can even consider the
11 defendant's character and background?

12 A. Yes, I think I can consider it.

13 Q. But you'd have to weigh it out with everything else?

14 A. Uh-huh.

15 Q. Are you pretty much, Ms. Chandler, a person who sees
16 shades of grey --

17 MS. BALIDO: Thank you, Judge.

18 Q. (By Ms. Balido) -- shades of grey or kind of a
19 black and white on issues?

20 A. I think I'm kind of a black and white.

21 Q. I used to be a black and white person until I
22 started working in the criminal justice field. Now I'm kind
23 of a shades of grey person.

24 A. You can see both sides; is that what your saying?

25 Q. I think I can. Having been on both sides, I think I

1 can see both sides now.

2 A. Yeah.

3 Q. Let me ask you, when we're talking about judging the
4 facts of this case and we're talking about holding the State
5 to its burden of proof -- and when I'm asking you this
6 question I'm asking specifically about the guilt/innocence
7 phase of this trial, whether or not the State can prove its
8 case beyond a reasonable doubt that he's guilty of capital
9 murder.

10 Would your ability to be fair and impartial be
11 changed if you learned that the victim in this case was an
12 80-year-old woman?

13 A. Would that make a difference in how I felt about
14 it?

15 Q. Would it make a difference in your ability to be
16 fair and impartial in judging the facts of this case?

17 A. I don't know that it would make a difference.

18 Q. Okay. Let me ask you, also, you look at that
19 indictment and you say that -- and you see that what we're
20 talking about is we're talking about Ms. Cunningham who was
21 killed and the State has alleged that her cause of death was
22 either shooting with a gun or drowning in water. And when
23 we're talking about those two methods of death or ways that
24 somebody died, those -- as you can understand, they might be
25 pretty gruesome.

1 Do you think you can look at graphic pictures in
2 this case, and some people can and some people can't, and be
3 able to judge those pictures for their evidentiary value and
4 not be swayed by mere sympathy or emotion in viewing those
5 photographs?

6 A. I've never looked at any photographs like that. I
7 don't know how I would react, really.

8 Q. Okay. And basically -- you know, I ask that
9 question just because the Judge will tell you or the law says
10 that you can't be swayed by mere sympathy or emotion, you
11 should judge the facts. And so it's kind of a question
12 that's also kind of a warning sort of situation.

13 Let me check real quick and see if there was
14 anything else I wanted to ask you about, Ms. Chandler.

15 A. Okay.

16 Q. Ms. Chandler, my last question is, we've talked a
17 lot about the rights of people accused of crimes in this
18 State, the 5th Amendment privilege, the right to be presumed
19 innocent before -- you know, unless and until the State can
20 prove its case beyond a reasonable doubt. And you said on
21 your questionnaire that you thought that citizens accused of
22 criminal offenses were afforded too many rights because it
23 seems that pleas go on and on.

24 Can you kind of explain that to me?

25 A. I guess -- I guess after they're convicted, I

1 guess --

2 THE COURT: Appeals go on and on?

3 A. Appeals go on. I meant appeals rather than pleas go
4 on and on.

5 Q. (By Ms. Balido) Okay.

6 A. Sometimes that's just disconcerting to me, I guess.

7 Q. Do you think that when we're talking about a death
8 penalty case where --

9 A. I'm sure I would want to appeal --

10 Q. Pardon?

11 A. I said I'm sure I would want the appeals if I was on
12 the other side.

13 Q. Yes. Yes. And do you think that the State should
14 have to dot all its I's and cross all its T's and do
15 everything right before they can be allowed to put somebody
16 to death in this State?

17 A. Yeah.

18 Q. I appreciate your time. Thank you very much.

19 THE COURT: Ms. Chandler, was there anything
20 about your jury experience in the burglary case some years
21 ago that would impact you adversely to either side as an
22 impartial juror in this case?

23 VENIREPERSON: No.

24 THE COURT: None at all?

25 VENIREPERSON: No.

1 THE COURT: All right. Thank you very much.
2 If you'd excuse yourself with Ms. Madore momentarily. The
3 attorneys will confer with co-counsel and then we'll bring
4 you back and I'll let you know whether you remain under
5 consideration.

6 (Venireperson leaves the courtroom.)

7 (State no challenge for cause - Ms. Chandler)

8 MR. DAVIS: The State has no challenges for
9 cause.

10 MS. MILLER: And for record purposes, there is
11 no jury --

12 THE COURT: Evaluation?

13 MS. MILLER: -- history information.

14 (Defense no challenge for cause Ms. Chandler)

15 MS. BALIDO: Judge, unfortunately we don't
16 have any challenge for cause either.

17 (Venireperson brought into courtroom.)

18 (Marilyn Chandler Prospective Juror No. 24)

19 THE COURT: Ms. Chandler, you remain under
20 consideration as a prospective juror in the case.

21 We've asked Mrs. Daily, the Court Administrator, to
22 come in. She has done so. She's going to be confirming some
23 phone numbers with you just so we can keep up with you. And
24 if they should change, if you would be kind enough to call
25 the court and let us know they've changed, whatever it may

1 be.

2 With your permission, and only with your permission,
3 I'm going to ask that you allow Ms. Madore, the bailiff, the
4 lady to your left, to take a Polaroid picture of you for the
5 benefit of the attorneys. We talk to an awful, awful lot of
6 folks.

7 VENIREPERSON: You don't remember.

8 THE COURT: And it kind of blends in faces
9 with information on the questionnaires and personal notes
10 that the attorneys have taken. They would like to have the
11 benefit of a Polaroid picture when they exercise their
12 peremptory challenges and say, oh, I remember this lady. May
13 we have your permission to do so? I assure you that once
14 this 48 qualified jurors have been identified, Polaroid
15 pictures, all of them will be destroyed, shredded, not even
16 be made a part of the trial record in the matter.

17 VENIREPERSON: Okay.

18 THE COURT: Also avoid the temptation of
19 contacting the Dallas Morning News with regard to back
20 issues.

21 VENIREPERSON: I haven't done that.

22 THE COURT: Involving news stories that
23 appeared about the time of the event that causes this
24 indictment to be returned.

25 Also, you're going to have to tell associates,

1 family members that you remain under consideration. But do
2 not allow anybody outside the courtroom influence your
3 decision if you're selected as a juror.

4 VENIREPERSON: Okay.

5 THE COURT: Fair enough. Any questions for
6 me?

7 VENIREPERSON: I don't believe so. Thank you.

8 THE COURT: Enjoyed having you this morning.
9 We'll be back in touch with you.

10 VENIREPERSON: Thank you.

11 (Recess of proceedings.)

12 (Venirepersons brought into courtroom.)

13 THE COURT: Good afternoon. Please have a
14 seat. Welcome back. Ask each of to you raise your right
15 hands and again be sworn in, please.

16 (Venirepersons additionally sworn.)

17 VENIREPERSON: I do.

18 THE COURT: Thank you. You may lower your
19 hands.

20 Though the individuals at the counsel tables have
21 been previously introduced, it's been a little while,
22 especially for a couple of you. Allow me therefore, if I
23 may, to reintroduce them to you again this afternoon.

24 Beginning first with the counsel table nearer to
25 you, we begin first with the lead counsel for the State in

1 this prosecution, one of the Senior Prosecutors in the Dallas
2 District Attorneys Office at the present time, the Honorable
3 Greg Davis.

4 MR. DAVIS: Good afternoon.

5 VENIREPERSON: Good afternoon.

6 THE COURT: Seated next to him is his
7 co-counsel during this particular trial. At the present time
8 this lady occupies the position of Chief Prosecutor assigned
9 to this the 194th District Court by Dallas County District
10 Attorney Bill Hill, the Honorable Mary Miller.

11 MS. MILLER: Good afternoon.

12 THE COURT: Moving on to the defense table, we
13 find first two of the three defense attorneys representing
14 the accused. We begin first with the Honorable Jennifer
15 Balido.

16 MS. BALIDO: How are you?

17 THE COURT: Seated next to Ms. Balido is one
18 of her co-counsels, a board certified criminal law
19 specialist, so designated by the State Bar of Texas as a
20 result of training, experience, and a very difficult test
21 which he has successfully completed, the Honorable Michael
22 Byck.

23 MR. BYCK: Good afternoon, ladies and
24 gentlemen.

25 VENIREPERSON: Good afternoon.

1 THE COURT: Seated next to Mr. Byck, opposite
2 Ms. Balido, is the accused, the defendant, if you will, Mr.
3 Jedidiah Isaac Murphy.

4 THE DEFENDANT: Good afternoon.

5 VENIREPERSON: Afternoon.

6 THE COURT: There is a third attorney
7 representing Mr. Murphy who is not with us this afternoon.
8 She is attending to matters germane to this case outside the
9 courthouse as we speak. I will introduce her by name and in
10 her absence, the Honorable Jane Little.

11 Mr. Gabel, ladies, let us, if we may, move right
12 into the matters at hand. I will be making some preliminary
13 comments to you, after which on an individual basis we will
14 proceed with the individual questioning and you will know
15 before you leave us this afternoon whether the attorneys and
16 the Court will continue to consider you as a prospective
17 juror on this particular case.

18 We've been at this, trust me, for a number of weeks
19 in a very laborious, tedious responsible manner. We are
20 working our way up to 48 constitutionally qualified jurors.
21 When that number has been reached, the attorneys will be
22 given an opportunity to exercise their peremptory
23 challenges. These are the excusing of otherwise qualified
24 jurors other than for racial or ethnic or gender reasons.
25 Does not mean that a person of color cannot be excused, but

1 it cannot be as a basis of that that they are excused.

2 Though we anticipate this process to be completed
3 within the next couple of weeks or so, we don't anticipate
4 the testimony in the trial to begin until Tuesday, May 29th.
5 The day before the United States Congress has designated that
6 Memorial Day will be celebrated in this country.

7 Do any of you know of any reason in your own
8 personal or business schedules that could not be altered in
9 such a manner that if selected, would prevent you from
10 returning on the 29th for a period of anywhere for four or
11 five, as many as eight days, depending upon how long the jury
12 deliberates? What might your problem be, ma'am?

13 VENIREPERSON: I'm subject to subpoena from
14 the Fifth District of Illinois as a witness.

15 THE COURT: We'll work with them. Trust me.
16 Anybody else? Nope. All right.

17 Let me, if I may, therefore somewhat fast forward
18 and get into the matters at hand as it deals with the death
19 penalty, the statutory scheme in Texas. Allow me at the
20 outset, if I may, Mr. Gabel, ladies, to make a few
21 hypothetical assumptions and they're merely that,
22 hypothetical and assumptions.

23 Let us assume this jury process has been completed.
24 It turns out that all three of you are jurors in the case.
25 Furthermore, let's again hypothetically assume that evidence

1 has been presented in the guilt/innocence stage of the trial,
2 you find after hearing the evidence, and receive the
3 instructions from me which we call the charge of the Court,
4 you and your other 9 jurors have completed your
5 deliberations. You have, again hypothetically, reached the
6 following conclusions: The presumption of innocence has been
7 overcome. Each of the operative portions of the charging
8 document, the indictment, we call them elements, have been
9 proven to your individual satisfaction beyond a reasonable
10 doubt as a result of which you return with your other fellow
11 jurors into the courtroom with a verdict that the defendant,
12 Jedidiah Isaac Murphy, is guilty of capital murder. The jury
13 would shortly then reconvene to determine the matter of
14 punishment.

15 Unlike virtually every other violation of the Penal
16 Code in the State of Texas, capital murder has only an
17 either/or possibility for punishment. Either on one hand
18 life in the penitentiary, or on the other hand death by
19 lethal injection. I trust you will agree with me the latter
20 speaks for itself.

21 Under current Texas law a life sentence for capital
22 murder results in the defendant so sentenced being required
23 to serve 40 calendar years in the penitentiary in custody
24 before being eligible for release on supervision which we
25 call parole. No guarantee that after 40 years the

1 penitentiary doors will fly open and the defendant will walk
2 out. Regardless of the good conduct that an inmate might
3 display during those 40 years, 40 calendar years,
4 day-for-day, week-for-week, month-for-month, then the
5 eligibility process begins.

6 Unlike many states Texas does not have life without
7 parole. A life sentence though, I'm informing each of you
8 right up front, we're hiding no cards, everything is up
9 front, 40 calendar years.

10 Because of the absolute irrevocability of death, the
11 legislature, with the approval of the United States Supreme
12 Court, has fashioned our punishment phase of a capital murder
13 trial to favor at the commencement of the penalty stage of
14 the trial a life sentence and not death. Therefore, an
15 individual going into the punishment or penalty phase of a
16 death penalty in Texas is at the beginning of that penalty
17 stage guaranteed a life sentence, and it only becomes a death
18 sentence depending upon certain circumstances which we're
19 about to discuss. It doesn't start at death and move down to
20 life. It stays at life and then only upon certain
21 circumstances being brought to the jury's attention can it
22 rise to death.

23 In the penalty phase of a capital murder case in
24 Texas, jurors are asked, after hearing additional evidence,
25 to consider at least two, sometimes depending upon the

1 circumstances, three questions which the legislature has
2 called special issues. Based upon what we understand the
3 circumstances to be in this case, there will only be two
4 questions. These are not questions that the attorneys and I
5 happened to dream up driving to the courthouse one morning or
6 sitting around some Friday afternoon and decide, hell, you
7 know, let's ask this jury the following question. It's true
8 all 254 counties in Texas.

9 The two special issues that the jury will be called
10 upon, again under my hypothetical scenario, after having
11 found the defendant guilty of capital murder which again
12 we're making a tremendous hypothetical leap forward, but
13 we're doing it in the interest of your time this afternoon,
14 are the special issues that you see to your right. Let me
15 ask each of you to read them to yourselves, after which I'll
16 explain to each of you the legal significance of those
17 questions.

18 (Venirepersons given time to read issues.)

19 THE COURT: Have you completed that? Okay.

20 Special Issue Number 1, grammatically I would
21 suggest to you that it is constructed in such a way that by
22 beginning with the word "whether," when you begin as a jury
23 to deliberate, the answer to that question -- at the outset
24 the answer to that question is no. Note with me whether
25 there is a probability. It's not there is a probability.

1 You are called upon to determine whether there is a
2 probability. So grammatically it starts at a negative or no.

3 Just as the burden of proof or, if you will, the
4 responsibility of presenting evidence in the guilt/innocence
5 stage of the trial lies with the District Attorneys Office,
6 the prosecutors, Mr. Davis, Ms. Miller, responsibility also
7 lies upon their shoulders to convince the jury, if they can,
8 based upon the evidence, that the answer to that question
9 should be yes and not no. But keep in mind that before you
10 get to this special issue, you've already found this
11 defendant under my hypothetical scenario guilty of committing
12 murder during the course of a robbery or kidnapping. Already
13 found that. To be a constitutionally qualified juror, you
14 cannot say just because I found him guilty of capital murder,
15 I am automatically going to answer that question yes. Can't
16 do that to be a qualified juror. I'm not here trying to talk
17 you out of your conscientious beliefs. Don't get me wrong.
18 But this is what we're going to be exploring this afternoon.

19 Let me give you an example from the past. Perhaps
20 you recall a few years ago there were two military cadets,
21 Tarrant County, Mansfield, I believe, that were accused,
22 indicted, found guilty of kidnapping a young girl and
23 shooting her because there had been a -- some kind of a
24 sexual relationship between the young man who I think went to
25 the Air Force Academy and had a girlfriend that went to the

1 Naval Academy, and they got -- lured this girl out of her
2 house and took her to some remote area and shot and killed
3 her. Murder during the course of a kidnapping, capital
4 murder. The Tarrant County District Attorney did not even
5 seek the death penalty in this case. And talking to him, he
6 said, look, we would like to think the young men and women
7 that go to our military academy are some of the elite of the
8 elite that we have. Say, look, I couldn't prove the answer
9 to Special Issue Number 1 should be answered yes, so I even
10 didn't seek death.

11 If, however, you answer as a jury, you, first person
12 plural, jury, answer Special Issue Number 1 yes, you're
13 two-thirds of the way to a death sentence. Two-thirds of the
14 way. You've already found the defendant guilty of capital
15 murder, murder during the course of a robbery or kidnapping,
16 already found under my hypothetical if you get to Special
17 Issue Number 2, continuing threat to society. Special Issue
18 Number 2, I have for a number of years when talking with
19 prospective jurors just like you, called it the mercy
20 question, the safety net question, the last chance question.

21 To be a constitutionally qualified juror when you
22 get to Special Issue Number 2, you must tell yourselves, and
23 therefore of necessity of course us as well, that you would
24 be willing to listen to mitigating evidence, if presented,
25 decide whether or not it's true, then decide if as a result

1 of that mitigating evidence it rises to the level because of
2 which the defendant should live and not die, give effect to
3 that mitigating evidence, and answer it accordingly. Because
4 I want to make each of the three of you abundantly aware, and
5 the attorneys too as well, that if the jury answers Special
6 Issue Number 1 yes, after conscientiously evaluating the
7 mitigating evidence, if presented in Special Issue Number 2,
8 answer no, I by law am required to sentence the defendant to
9 death.

10 Texas is not a jury recommending state. Florida, if
11 but 7 of the 12 jurors for instance recommend that a death
12 sentence be imposed, the Judge can go along with it, can
13 overrule it, as the Judge sees fit. Not so Texas. Being the
14 populist traditional state that we are, we give tremendous
15 responsibility to each of the 12 jurors to make a decision of
16 life or death. Any configuration of answers other than yes
17 and no, again I'm not a thirteenth juror. I don't overrule
18 the jury's decision. If it's other than yes and no, life
19 sentence.

20 If you answer Special Issue Number 1 no as it
21 begins, you don't even have to get to Special Issue Number
22 2. Just come out in the courtroom and say, look, we don't
23 think he's going to be a continuing threat to society, 40
24 years, life sentence, that's it.

25 Have I confused all of you? I hope not.

1 We're about to begin the individual questions. Let
2 me assure each and every one of you to the attorneys'
3 questions there are no right or wrong, in quote, answers as
4 long as they're truthful. We don't give prospective jurors
5 such as yourself grades on a citizenship scale, if you will,
6 as a result of your answers. We only ask that you be
7 brutally honest with yourself and us with regard to these
8 questions, and that's why this process takes so long. And
9 I've done a number of these cases, and obviously we can all
10 appreciate the fact of the seriousness of the allegations,
11 the seriousness of the consequences, and we're not going to
12 rush to judgment. But whatever the outcome, I want to assure
13 you as Judge of this Court, I will see to it to the best of
14 my knowledge and ability and experience, it's done correctly,
15 regardless of the outcome. And I would hope that you would
16 want a Judge to look upon it that way.

17 Any questions for me? Nope.

18 Let me assure you before we begin the questions, the
19 attorneys will be treating you with great deference and
20 respect. There have been some comments in the media the last
21 few years about the, quote, unquote, Rambo tactics that
22 litigators use with regard to behavior in the courtroom which
23 has occasioned the disgust of not only many citizens but also
24 lawyers. And I can assure you, the judiciary, you will be
25 treated during the questioning by some of the finest

1 attorneys that not only do we find in Dallas, but Texas, and
2 I'm privileged to teach a course of this type for the
3 American Bar Association from California to South Carolina.
4 Seen a lot of these types of presentations. You will find
5 the treatment by the attorneys, their probing questions, may
6 be a little difficult to answer, but they will be done with
7 great deference, respect, and professionalism. So I trust
8 that you will take that to heart.

9 As it turns out, we are not being very gallant it
10 appears with Mr. Gabel. You have the lowest number so we'll
11 start with you ladies. If we can excuse you, go into the
12 jury room. And as soon as questions have been completed with
13 Mr. Gabel -- incidently, Ms. Lawley, you'll be next. And,
14 Ms. Neff, you will be the third one this afternoon.

15 Mr. Gabel, may I invite you to have a seat over here
16 in the witness stand.

17 And, Sheriff, may we move the special issues over
18 into the jury box, please?

19 THE BAILIFF: Yes, sir.

20 THE COURT: Mr. Gabel, have a seat if you
21 would.

22 VENIREPERSON: Thank you.

23 THE COURT: And make yourself as comfortable
24 as circumstances permit. Are you ready to begin?

25 VENIREPERSON: Yes, sir.

1 THE COURT: We will begin with the State in
2 the Honorable Greg Davis.

3 Mr. Davis, Mr. Gabel.

4 MR. DAVIS: Thank you. May it please the
5 Court.

6 WILLIAM GABEL
7 was called as a venireperson by the Court and, after having
8 been first duly sworn, testified as follows:

9 Voir Dire Examination

10 By Mr. Davis:

11 Q. Good afternoon, Mr. Gabel. How are you?

12 A. Very well, sir. Thank you.

13 Q. Good. As the Judge just told you, I'll have a
14 chance to speak with you for a few minutes this afternoon.
15 If necessary, you can take a break after that and Mr. Byck or
16 Ms. Balido will speak to you on behalf of Mr. Murphy.

17 What the Judge just said about right and wrong
18 answers, that's exactly right. None of these questions have
19 right or wrong answers. Most of them deal with how you feel
20 about an issue, what your opinions are. I've done enough of
21 these cases, I've talked to enough people to know that
22 everybody feels differently. You'll find as we talk about
23 your opinions there will come a time probably when I'll ask
24 you another question. That will be can you follow the law in
25 this case. Because everybody who comes down here has

1 opinions. Some of them are very strong opinions from time to
2 time. And there's certainly nothing wrong with that. But if
3 you're selected as a juror in this case, you'll take another
4 oath. So far you haven't taken this oath. That oath will
5 instruct you to find a true verdict according to the law and
6 the evidence in this case. Judge Entz will give you the
7 law. He'll tell you what words mean. He'll tell you what
8 you're required to do, what the burden of proof is in this
9 case. And even if there's a conflict between maybe how you
10 feel about an issue and the law that he gives you, that oath
11 would require you to follow the law instead of how you may
12 personally feel about an issue.

13 The second thing will be to base a verdict on the
14 evidence that you hear. And that's part of your job also, to
15 listen to witnesses, determine what the facts are in this
16 case, and then apply that to the law that he gives you.

17 In general, sir, do you feel like you're the type of
18 person who will be able to follow the law given to you by
19 Judge Entz?

20 A. Yes, sir.

21 Q. Okay. Let's talk about some of the legal
22 requirements in this case. Most of these have been discussed
23 with you by Judge Entz, but let's go over them again because
24 these are the rights that insure that Jedidiah Murphy will
25 receive a fair trial, and that's very important, obviously,

1 in this kind of case.

2 The first right that he has is he has the right to
3 be presumed innocent of this offense. As he sits here right
4 now, he's presumed innocent. Even though we all know a
5 certain number of things have already happened. He's been
6 arrested for the offense of capital murder. He's been
7 charged with that offense. He's been indicted by the Dallas
8 County grand jury for the offense of capital murder.
9 Regardless of all of that, he's still presumed innocent of
10 the offense. No jury can find him guilty until the State of
11 Texas proves his guilt beyond a reasonable doubt. If we meet
12 that burden and if we prove his guilt beyond a reasonable
13 doubt, you find him guilty. If we fail to meet that burden
14 of proof, you find him not guilty.

15 Let me -- let me just address something on your
16 questionnaire and -- because sometimes this comes in conflict
17 with presumption of innocence. You indicated -- we asked you
18 a question. You probably don't recall this, but we asked you
19 a question on the questionnaire, if someone is accused
20 capital murder, he should have to prove his innocence. And
21 you answered that you strongly agreed with that. And, you
22 know, and I've had that response before. And I guess it's
23 only natural from watching TV that perhaps defendants somehow
24 prove their innocence or they come up with a witness and
25 whatnot, but you need to understand what the law says. The

1 law says that Mr. Murphy does not have to do one single thing
2 in this trial.

3 A. Uh-huh.

4 Q. He never has the burden of proof himself. His
5 attorneys could sit there and do crossword puzzles. They
6 could doodle. They could never ask a question. And if I put
7 on witnesses and I failed to prove his guilt, that
8 presumption of innocence would be strong enough to say not
9 guilty.

10 So my question to you is this. Do you believe that
11 you can wait, listen to the evidence, and make the State of
12 Texas prove this man's guilt beyond a reasonable doubt before
13 you'll find him guilty?

14 A. Yes, I believe I could.

15 Q. Okay. Are you going to require Jedidiah Murphy or
16 his attorneys to do anything in order to prove his innocence,
17 because the law says he doesn't have to do that because again
18 remember, the burden of proof in this case will always be
19 right here with the State of Texas.

20 A. Right.

21 Q. Can you assure me -- for instance, if I put a case
22 on and it doesn't quite come up to the standards of beyond a
23 reasonable doubt, maybe I get close, but I don't quite get
24 there, but the defense does nothing, can you assure me that
25 you'll simply look at my evidence, and if I don't meet that

1 burden, you'll say not guilty even if he sits there and does
2 nothing? Can you assure me that you can do that also?

3 A. Yes.

4 Q. Here's the second thing that would play into that.
5 It's Mr. Murphy's right to remain silent. Okay. No
6 defendant can be forced to testify against himself. Now, I
7 know from experience again a lot of jurors say, you know, if
8 it were me and if I were charged with something as serious as
9 capital murder, I'd want to get on that stand. I'd sure want
10 to tell the jury my story if I was not guilty, if I were
11 innocent of the charges. I think that's a natural reaction,
12 but the law doesn't look at it that way. The law says again,
13 because I've got the burden of proof, this man doesn't have
14 to get on the witness stand, he doesn't have to ask
15 questions. I've represented -- as a defense attorney a few
16 years ago I represented defendants. And I had to counsel
17 them about testifying or not testifying. Frankly, I had
18 clients that would have made terrible witnesses. Some didn't
19 speak English. Some of them didn't speak well. There may be
20 any number of reasons why someone doesn't testify.

21 What the law would require you is this. If the
22 defendant chooses not to testify, you cannot hold that fact
23 against him. Here's what would be wrong. It would be wrong
24 to go back there in the jury room and say, well, he didn't
25 testify, he must be hiding something. Even though the State

1 maybe didn't quite get to beyond a reasonable doubt, I'm
2 going to couple his silence with that proof and I'm going to
3 boost the State over that barrier. You can't do that.

4 Can you assure me that if Mr. Murphy does not
5 testify in this case, that you will not consider that and you
6 will not hold that against him for any reason?

7 A. That is correct.

8 Q. Another premise here is that I have to prove his
9 guilt beyond a reasonable doubt by proving the elements in
10 that indictment beyond a reasonable doubt. There's a number
11 of things that I have to prove. That document tells me what
12 I have to prove. It tells Mr. Murphy what he's charged with.
13 But among other things, Mr. Gabel, I've got to show that on
14 or about a certain date in Dallas County, Texas, that
15 Jedidiah Isaac Murphy intentionally killed a woman by the
16 name of Bertie Cunningham, that he did so during the
17 commission or the attempted commission of either a robbery or
18 kidnapping. That's what I have to prove.

19 Some people would say you mean to tell me that you
20 have to prove this happened in Dallas County, Texas? Doesn't
21 that sound a bit like a technicality? I know it may sound
22 that way, but I'm telling you that I know that the law will
23 require me in this case to prove that this offense occurred
24 in Dallas County, Texas. If I fail to prove that, Judge Entz
25 will instruct you that you have to say not guilty if I fail

1 to prove that beyond a reasonable doubt.

2 Let me give you a couple of examples, and Judge Entz
3 alluded to the fact some of these questions may be hard. Let
4 me give you a hard example here. Let's say -- let's say that
5 I go out and I go to the nearest school and it's full of
6 school children and I fire bomb that school and I kill 500
7 children inside that school building. Okay? And I'm brought
8 to trial. There's no doubt in your mind that I have taken
9 all 500 lives. There's no doubt in your mind after you see
10 the facts that I'd probably go out and do that again. You're
11 looking at an extremely dangerous individual. But let's say
12 for whatever reason the State of Texas failed to prove that
13 that school was in Dallas County, Texas. Maybe it happened
14 to be in Kaufman, Texas, or Ellis County, or maybe the State
15 just never asked the question. They just didn't ask the
16 question necessary to get that information into evidence.
17 You can see it's going to be a hard situation because you
18 know that I did that and you know I'm as dangerous as I can
19 possibly be, but you also know that the Judge has instructed
20 you that if you have a doubt about whether that school was in
21 Dallas County, Texas, you'd have to say not guilty.

22 Let me make it just a little bit harder for you.
23 Let's say all other 11 jurors back there say to you, we don't
24 care. We don't care what the Judge says. We don't care what
25 the law is. We're not about to let a dangerous man go free

1 and go out here to the next school building and burn it down,
2 too. So forget the law. Let's do what's right. Let's
3 follow our conscience. You're put in a pretty tough
4 situation. You know what the law requires of you. You know
5 what your oath as a juror requires you to do, and that is to
6 say not guilty because the State didn't prove Dallas County.
7 You also know that I'm a very dangerous person.

8 Some people frankly say they don't think they could
9 do it, they don't think that they could follow the law. They
10 say their conscience wouldn't allow it. They say they just
11 don't have the discipline necessary to do it, whatever
12 reason.

13 What I need to know, Mr. Gabel, is, do you feel like
14 even under those kinds of extreme situations that you could
15 follow the law, say not guilty even though it may leave a
16 very sick feeling in the pit of your stomach, could you still
17 do that?

18 A. Yes, I believe so.

19 Q. Let me give you another example. Let's say the same
20 situation. Let's say, again this, time there's no problem,
21 that you know the school building is in Dallas County. Let's
22 say again I go out, I fire bomb, and I kill 500 children.
23 Nobody sees me do, though. There's no witnesses, but a
24 couple of days later I'm stopped by a police officer. He
25 starts talking with me. I go down to the station with him

1 and I said, you know, I'll give you a statement, I'll admit
2 that I killed all 500 of those children. He didn't force me
3 to do that. I just decided on my own I wanted to get it off
4 my chest and tell them what I did. So I go in, the detective
5 starts taking my statement. But if you watch these
6 television shows, you probably know about these Miranda
7 warnings, what the police have to tell the suspects.

8 Let's say there are four different things that the
9 officer has to tell me. Let's say he's been overworked, he's
10 a bit tired, he forgets to give me one of those warnings.
11 Maybe he forget to tell me that an attorney would be
12 appointed for me if I couldn't afford to hire my own lawyer.
13 I didn't want a lawyer. Everybody knows I didn't want a
14 lawyer. I said I didn't want a lawyer, you know, just forget
15 it. But he forgets to give me that warning. And in that
16 statement I lay out all the facts necessary to prove my
17 guilt. I'm brought to trial. The detective is testifying.
18 There's no eyewitnesses. Really, my guilt depends on that
19 confession alone. And let's say he's honest. He gets on
20 that witness stand and says he came in there voluntarily, I
21 didn't threaten him, I didn't promise him anything, but I did
22 not give him all of his warnings. I just flat forgot to give
23 the last one to him.

24 You've got another kind of similar situation, and
25 you know I'm as guilty as I can be. You know I'm dangerous.

1 Maybe in that statement I said if I ever get out, I'll fire
2 bomb the very first building I see when I get out of here.
3 You know I'm dangerous, but you also know this, the Judge
4 would instruct you that if all of those warnings were not
5 given, you'd have to take that confession and you'd have to
6 toss it aside, disregard it, and look at any other remaining
7 evidence. Well, in my case there is no remaining evidence,
8 obviously. So there is no other evidence of my guilt. All
9 other 11 jurors are saying, you mean to tell me we're going
10 to let the man go, because he didn't get a warning given to
11 him? He didn't ask for a attorney. That's silliness. Well,
12 I'm saying to you that the law would require you to do that.
13 Again, it's the very same kind of question.

14 Would you have the kind of discipline necessary even
15 in that kind of situation to say, I'm following the law, even
16 though he's dangerous, I can't consider the confession, there
17 is no other evidence, not guilty? Could you do that?

18 A. That is correct. Yes.

19 Q. Thank you. Let's talk for a moment about the
20 offense of murder. Remember, capital murder, as the Judge
21 has told you, capital murder is always an intentional murder
22 plus something else. It could be the intentional murder of a
23 police officer. It could be the intentional murder of a
24 child younger than 6 years of age. In this case it's the
25 intentional murder, plus the fact it was committed during the

1 commission or the attempted commission of either robbery or
2 kidnapping. So those two things together join to form a
3 capital murder.

4 Let's say you found someone guilty of intentional
5 murder alone without the other aggravating circumstances.
6 That's not a death penalty case. Let's say somebody is
7 sitting in the jury box over here. I don't know them. I've
8 never talked to them in my life, but I just don't like the
9 way they look. I pull out a gun, I shoot them in the head
10 ten times, I stand up, and I laugh about it. As bad as that
11 may be, that's not a capital murder because it's an
12 intentional murder, but there's not that other factor
13 together with it.

14 The law says in that kind of situation that I could
15 get anywhere between 5 years in the penitentiary up to 99
16 years or life in the penitentiary. That's -- that's the
17 range of punishment. Some people have said intentional
18 murder, there's no way that I'm ever going to give something
19 as little as 5 years in the penitentiary. Life is just too
20 sacred for that. And that's fine.

21 THE COURT: Now, Mr. Gabel, you may not think
22 5 years is appropriate under the scenario that Mr. Davis just
23 hypothesized with you.

24 Q. (By Mr. Davis) Right. I mean, in that situation,
25 you may say that's just a senseless killing and give me the

1 maximum. But what I'm trying to get around to is this.
2 There are all sorts of murders. I've prosecuted a number of
3 them. All the circumstances are different. Why they were
4 committed, how they were committed, the relationship between
5 the people. Maybe they were just pure strangers like this
6 situation or maybe we knew each other. Maybe there had been
7 an ongoing feud for years. Maybe there's some other event
8 that has occurred that has caused that to occur. All
9 defendants are different, too. Like the Judge said, going
10 back to the academy cadets. Maybe the individual has been an
11 asset to the community, maybe a family man, active member in
12 the church, and something snapped and caused him to commit a
13 capital murder, so every one is different.

14 The key here would be -- is this, to be
15 constitutionally qualified in a murder case, could you keep
16 an open mind to the full range of punishment? And that
17 really means this. If you heard an intentional murder case,
18 and after hearing all of the facts of that case, you decided
19 in your heart that that case and that defendant deserved 5
20 years, and maybe you thought you'd never see a case like
21 that, but, by golly, this is the one that you never did
22 expect. If you found that to be the case, could you follow
23 through and could you actually assess 5 years if you thought
24 that was the right thing to do?

25 A. If it was the right thing to do, yes.

1 Q. Okay. You know, again, it comes down to not
2 prejudging, waiting for the facts, honestly telling us, it
3 really depends on the facts that I hear. I'll match the
4 verdict in that case to the facts that I hear. You know, and
5 again, intentional means just that. It's not an accident.
6 It's not self-defense. It's not insanity. There can be any
7 number of scenarios here. I've given a scenario that I think
8 might illustrate that. I give you this one here, but on the
9 other end, you could have something as dissimilar as perhaps
10 I'm a parent of a teenage girl. And I found out that an
11 individual has sold her crack cocaine and got her hooked on
12 crack to the extent that she's never going to be the same.
13 Maybe there's a brain damage as a result of that. And I find
14 out who did it, and I intend to go out there and kill that
15 person. I do exactly that.

16 Can you see how that might be a very -- that might
17 be a far different situation than I have here? You may look
18 at me and say he's never done anything like this again. I
19 don't think he'll ever be a harm to anybody. I'm going to
20 give the man the minimum. That's why I say wait until you
21 hear the facts. Okay?

22 A. Okay.

23 Q. Let's talk about these special issues for just a
24 minute, Mr. Gabel. I know the Judge has gone over them in
25 some detail, so we don't have to spend a lot of time, but do

1 you feel like you understand the burden of proof on Special
2 Issue Number 1?

3 A. Yes.

4 Q. Okay. You understand it's presumed to be no, you
5 understand that you have to wait for all the evidence and see
6 if the State of Texas has shown that it should be answered
7 yes beyond a reasonable doubt, correct?

8 A. That is correct.

9 Q. Would you wait for all of the evidence to come in,
10 or would you be one of those people who would automatically
11 answer it yes just because you found someone guilty of
12 capital murder?

13 A. I would believe I would want to wait for all the
14 evidence to come in before a final conclusion.

15 Q. All right. And, you know, in that regard you have
16 to understand this is a two-part trial. The first part deals
17 with the guilt or innocence of the defendant. The evidence
18 that we're going to show you will be focused on that
19 particular issue.

20 When we get to the punishment phase, the law says
21 other types of evidence can become admissible. Generally
22 speaking, that deals with background or the character of the
23 defendant. Has he been in trouble before? What sort of
24 trouble has he been in? Has he been through the criminal
25 justice system before? Have there been efforts by the system

1 to help him or try to rehabilitate him? You get to hear that
2 after you've found an individual guilty. And that may be
3 helpful to know in deciding Special Issue Number 1.

4 When you look at that issue, Mr. Gabel, and don't
5 worry about the legalities or the rules of evidence or
6 anything else, but if you had your druthers, what sort of
7 things would you like to know about before you had to answer
8 Special Issue Number 1? What do you think might be helpful
9 in knowing?

10 A. Well, I think as you mentioned the background would
11 be critical to know what track record the individual has had
12 in light of any crimes or misdemeanors, whether there is a
13 historical element or elements involved in this whole thing
14 that led up to this situation.

15 Q. Okay. And a lot of jurors tell me that. And
16 secondly, you have to understand you can still consider the
17 facts of this particular capital murder, too. How was it
18 committed? Why was it committed?

19 A. Right.

20 Q. Who is the victim? And let me tell you this, I'm
21 not permitted to go into the -- all the details of this case,
22 but I am permitted to ask you one question. If the facts in
23 this case showed you that Bertie Cunningham, the victim, was
24 an 80-year-old woman at the time of her death, if that fact
25 turned out to be true, could you still be fair and impartial

1 to Mr. Murphy, or would that fact by itself raise such.
2 emotion or sympathy in your mind that you just simply
3 couldn't be looking at the facts to determine whether he's
4 guilty, innocent, or what the proper punishment should be?

5 A. I feel I would probably need to have more
6 information other than just that one specific situation.

7 Q. Okay. Fair enough.

8 A. Age factor.

9 Q. Yes, sir. Let me talk to about some of the words in
10 Special Issue Number 1. The reason I do that is most of
11 these words do not have legal definitions. A lot of the
12 words in the first part of the trial will. The Judge will
13 define what murder is, what a robbery or kidnapping is, what
14 intentional means. But when we get down to these words,
15 we're going to leave these up to you. That's what the
16 legislature has done. They've given us the questions, but
17 they don't give us the definitions.

18 The first word is probability. The legislature
19 could have written that to say whether there is a possibility
20 or whether there's a chance. That's not what probability
21 means, obviously, because they've used the word
22 "probability." They could have made the burden of proof so
23 high as to make the State prove that there's a certainty that
24 the defendant would commit criminal acts of violence. We
25 don't have to go quite that far. But the important thing is

1 can you see the distinction between probability and something
2 less, like a possibility or a chance?

3 A. Yes.

4 Q. Okay. And a lot of jurors tell me to be a
5 probability, there has to be a likelihood of something
6 happening, as opposed to a chance or a just possibility of
7 something happening here. Are you comfortable with that?

8 A. Yes, I am.

9 Q. Criminal acts of violence. Again, they could have
10 gone to the extreme to say any criminal act will do. I guess
11 jaywalking or littering would qualify, but it has to be
12 something more than that, obviously. They could have said
13 that the State has to prove something as specific as murder
14 or capital murder, and I don't have to do that. Criminal
15 acts of violence, most jurors tell me that involves someone
16 else either being harmed or threatened with harm. That's
17 really kind of the distinction.

18 Do you see that as the distinction, or do you see
19 that differently?

20 A. I would agree with your comment, yes.

21 Q. Finally the word "society." Society can mean
22 everyone. It can mean people like and I that live in the
23 free world. It can mean people in a prison. Some people
24 said they've never thought of prison as being part of
25 society, but if you think about what the Judge just told you

1 about a life sentence on capital murder, it means 40 calendar
2 years before an individual becomes eligible for parole. I
3 like to think of society as being anywhere the defendant may
4 find himself, anyone he may come in contact with. So can you
5 see that both prison and the free world may be part of his
6 society?

7 A. Yes.

8 Q. Some people say, well, really giving the life
9 sentence for capital murder, prison should be the only part
10 of society that jurors should consider. You don't have to
11 limit it to that extent. I like to ask jurors if they've
12 heard about the Texas 7, for instance, the case where the
13 inmates broke out of the prison system in South Texas and
14 came up here and killed the Irving police officer over the
15 Christmas holidays. You see, some of those individuals were
16 actually serving life sentences when they escaped and
17 committed another capital murder up here.

18 Do you feel like you'd be excluding any part of
19 society, or do you feel like you would be including both the
20 free world and prison when you looked at the word "society"?

21 A. I would include both of them.

22 Q. Let's go on to Special Issue Number 2, then. I
23 believe the Judge again has indicated that what the law is
24 going to ask you to do is to take another serious look at all
25 the evidence, even though you've found this defendant guilty,

1 even though you think beyond a reasonable doubt he's going to
2 be a continuing threat to society, we ask you to take another
3 look at all of the evidence, no matter where it came from,
4 and ask yourself this question. Is there something in that
5 evidence that rises to the level where I think this man
6 should get a life sentence instead of a death sentence.
7 That's really the inquiry that we ask you to make.

8 First of all, do you think that you would still be
9 able to make that inquiry even if you found someone guilty
10 and even if you think they're a threat, could you still take
11 one more look at the evidence and see if there is something
12 mitigating enough to spare his life?

13 A. Yes, I could.

14 Q. Okay. The reason we ask that is because some people
15 say if I really think he's a threat and if I'm that close to
16 death, I don't care what the evidence is, I'm going to make
17 sure he dies. Well, again, they're free to think that, but
18 that's not what the law is asking you to do. There may be
19 something there that you want to take another look at.

20 Let me ask you, when you think of mitigating
21 circumstances, do any things come to your mind, Mr. Gabel?

22 A. Anything that might limit or lessen the situation
23 that might raise a question as to the magnitude of the crime
24 to where -- in turn -- I think as you're putting it, the
25 second consideration or at least go through the process of

1 thinking once more in light of the fact that we're talking
2 about a life or death situation.

3 Q. Right.

4 A. To exhaust that.

5 Q. You know, among other things, again, you can go back
6 there, you can look at the circumstances of the offense
7 again. Maybe it's the type of offense where it was a very
8 spur of the moment, maybe there was a kind of a crime of
9 passion if you will. Maybe there was a long-standing feud.
10 Maybe there's something about the offense itself that leads
11 you to believe that the man's life should be spared. You can
12 also look again at the defendant's character and background.
13 Again, may it's kind of like the academy cadets where they
14 have lived just spectacular lives up to that point, never
15 been in trouble with the law, been a credit to everyone that
16 they've been around. Maybe that's a situation, too.

17 And then again, the personal moral culpability of
18 the defendant, that's really just how blameworthy is he for
19 this particular offense. You see in the offense that the
20 Judge was talking to you about where there were two people,
21 it's not uncommon to have one person actually do the physical
22 act of killing while the other person may assist them in some
23 way. And sometimes jurors will kind of draw a distinction of
24 blameworthiness between the person that actually does the
25 shooting or does the stabbing, as opposed to somebody who

1 maybe was the lookout or assisting in some way. That's kind
2 of what we're talking about.

3 Let me talk to you about some things that jurors
4 have mentioned to me in the past and just get your general
5 reaction to these things. Sometimes jurors will tell me a
6 person's age may be mitigating in some fashion. The thought
7 being that younger people are more capable of being
8 rehabilitated than older people. I've had other people tell
9 me that they don't think it really would be, that as long as
10 they've reached the legal age where they know right from
11 wrong, they're responsible for their actions. And then I've
12 had other people just say it's something that they kind of
13 want to look at, what the age is, look at the individual.

14 How do you feel about that?

15 A. I think once a person reaches that legal age and --
16 that there has to be accountability for their actions,
17 whatever that outcome might be.

18 Q. Okay. All right. Let me talk to you about drug and
19 alcohol use. Sometimes people will say it's a disease. They
20 can't help themselves. If they went out and got high, if
21 they got drunk and they committed an offense. Maybe I'd cut
22 them some slack for that. I've had other people say that's a
23 choice they made. Whether it's a disease process or not,
24 they made the choice to take that substances, especially if
25 they've been taking it maybe a long time and they know

1 exactly how they react when they take drugs or take alcohol.

2 Do you have any feelings about that?

3 A. Yeah, I would feel strongly about the accountability
4 issue.

5 Q. Now, let me -- let me tell you the next issue really
6 deals with mental health, and that's really the reason why we
7 have Special Issue Number 2. There was a defendant by the
8 name of John Paul Penry. He claimed that he was retarded.
9 We didn't have Special Issue Number 2 when he was first
10 tried, so the courts said we want some mechanism where juries
11 can that sort of thing into account. For instance, you can
12 have an individual who's 40 years old, but he's so severely
13 mentally retarded. Maybe he's functioning on the level of a
14 6 or 7-year-old. He knows right from wrong, you know, but he
15 just is of that intellect you see. A jury might decide,
16 yeah, he did it, no question, maybe they even think he's a
17 threat, but do I really want to sentence to death a man who's
18 functioning at the age of a 6-year-old, so that's what we're
19 talking about there.

20 Do you think that -- you think that mental issues
21 might be something that you might be willing to look at, at
22 least, you know, look at the severity, look at the legitimacy
23 of them, and if you believe them, then take that into account
24 in some fashion?

25 A. Yes, I can.

1 Q. Sometimes jurors talk about remorse. You know, do
2 they actually feel sorrow for what they've done? Have they
3 demonstrated a willingness to turn their life around, if you
4 will. You can have a situation where somebody does a
5 terrible killing and instantly they regret everything that
6 they've done. Maybe it was a crime of passion. They sit
7 there. They call the police. They wait for the police.
8 They fully cooperate. They're a hundred percent honest with
9 the police. Maybe the police officer testifies that when he
10 got there, that the individual was just crying and praying to
11 God for forgiveness for what he's done. On the other hand,
12 you may have a case where there's absolutely no remorse at
13 all. Or maybe the first remorse that a defendant shows is
14 when he's told he's charged with capital murder and he's
15 handcuffed. But again, that's up to you.

16 See, mitigation is personal. Everybody looks at it
17 differently. What I look at as mitigating, you may look at
18 as aggravating. There's no list that we go down. All we ask
19 you to do is this, Mr. Gabel, be willing to honestly say that
20 if you took a look at all the evidence in this case and you
21 saw something, whatever it was, that you thought was
22 mitigating enough -- maybe it was that retardation we talked
23 about, if you saw something like that and you thought it was
24 worthy of saving this man's life, would you go ahead and
25 answer Special Issue Number 2 yes, so that he would get a

1 life sentence? Would you be able to do that?

2 A. Yes, I believe I could.

3 Q. Mr. Gabel, I think I've about run through my time
4 with you. Do you have any questions from me? Maybe it's
5 something we went over pretty quickly that leaves a question
6 in your mind, or maybe something I didn't get to that you've
7 been wondering about since you filled out the questionnaire?

8 A. No.

9 Q. Okay. I appreciate your time. I appreciate your
10 answers, your honesty. That's really what we depend upon
11 when we try to select 12 fair jurors here.

12 A. Thank you, sir. I appreciate it.

13 THE COURT: Mr. Gabel, before we begin with
14 the questioning by Mr. Byck, do you want to take a stretch
15 break or go to the rest room?

16 VENIREPERSON: No, I'm fine. Thank you, Your
17 Honor.

18 THE COURT: You want a cup of water? Are you
19 ready to continuing?

20 VENIREPERSON: Yes, sir.

21 THE COURT: All right. We'll proceed on
22 behalf of the accused, Jedidiah Isaac Murphy, the Honorable
23 Michael Byck.

24 Mr. Byck.

25 MR. BYCK: Thank you, Your Honor. May it

1 please the Court.

2 Cross-Examination

3 By Mr. Byck:

4 Q. Again, good afternoon, Mr. Gabel.

5 A. Good afternoon.

6 Q. My name is Mike Byck. And together with my
7 co-counsel Jennifer Balido, we represent our client, Jim
8 Miller -- pardon me, Jim Murphy -- it's going to be a long
9 afternoon -- in this trial for his very life.

10 I've appreciated the honest and deliberate responses
11 that you gave to the Assistant District Attorney. I would
12 ask that you do the same for me. Again, there are no right
13 or wrong answers, sir. We're not grading your test. And it
14 occurs to me that we say around here very often, as a matter
15 of fact almost every other sentence, well, in order to be a
16 qualified juror -- well, very frankly, sir, you don't have to
17 be on this jury. No individual has to be on this jury. And
18 it's especially important when you consider that, number one,
19 you're going to be required to do a very difficult job.
20 Number two, it's probably a job that you don't to do. And,
21 number three, and this is the thing that I don't think a lot
22 of people understand, is that we as the law and we as the
23 lawyers in this court will not require you to surrender your
24 deeply held beliefs. It will not require you to violate your
25 conscience or your personal moral philosophy. This Court

1 will not require you to put aside your strong personal
2 feelings or feel that you're being intellectually dishonest.
3 And you don't have to commit any ethical wrongs or any
4 offensive acts. You just don't have to do that.

5 Now, we all have to pay our income taxes. That's
6 too bad. But we don't all have to sit on juries. I would
7 submit something to you, with all due respect, that there is
8 no doubt in my mind that you would be a fine juror in most
9 cases. There is also no doubt in my mind that you would not
10 be a fine juror in all cases. No one would. Due to their
11 backgrounds, due to their upbringings, due to their personal
12 philosophies, their educations, whatever. They're just --
13 there may be some cases out there that you may not be a good
14 juror on.

15 THE COURT: You wouldn't be very good on
16 embezzlement from a bank, would you?

17 Go ahead, Mr. Byck.

18 MR. BYCK: Thank you, Your Honor.

19 Q. (By Mr. Byck) We asked you, are you in favor of the
20 death penalty and you told us yes. We asked you to explain
21 your answer, and you filled nothing in. I imagine since the
22 time you've been down here, you've been thinking about this.

23 A. Yes.

24 Q. I take it that you are still in favor of the death
25 penalty. Could you tell me why?

1 A. I think probably the major thing -- I know there's a
2 lot of controversy on whether it really is a deterrent, but I
3 do think that probably it would act as a deterrence for --
4 for people to think second, twice of committing a murder.

5 Q. Uh-huh.

6 A. And I think it should be incorporated into our -- as
7 far as a possible punishment in cases of those proven capital
8 murders.

9 Q. Okay. That leads me directly to another question,
10 and you have already said that you would have the capital
11 murder, the death penalty in our statutory scheme.

12 Let me ask you, sir, you understand how our capital
13 setup is, that we have a guilt or innocence phase. And only
14 upon being found guilty of an intentional murder while in the
15 course of either rape, robbery, arson, burglary, whatever it
16 happens to be, or murder of a special person, a fireman,
17 policeman, child under 6, mass murder, multiple murder, or
18 murder for hire, it's only after being found guilty beyond a
19 reasonable doubt that we proceed to these questions. And
20 these questions dictate the answers to whether an individual
21 will receive the death penalty or life in the penitentiary.
22 So no one is going to escape any accountability. Nobody is
23 escaping any responsibility. It's a question of whether the
24 individual should get the death penalty or not.

25 Let me ask you, if we didn't have these questions,

1 if we didn't have Special Issue Number 1 and Special Issue
2 Number 2, are there any crimes that you would have
3 essentially an automatic death penalty for? If an individual
4 was convicted of this offense, that individual gets the death
5 penalty. He, of course, is entitled and gets a fair trial.
6 And he, of course, is entitled to and gets any appeals that
7 are appropriate. But we don't have a punishment phase. We
8 don't have the sentencing phase. We go straight from your
9 guilty to you're dead.

10 Let me give you an example. Since you're sharing
11 with me, I'll share with you. It is my personal opinion that
12 treason in the time of war ought to have an automatic death
13 penalty. I think that if some citizen gives aid and comfort
14 to the enemy and another citizen is hurt or killed or
15 anything like that as a result, that that individual ought to
16 be given a fair trial. And if that individual is found
17 guilty, that individual ought to be able to pursue all
18 avenues of appeal that are appropriate. But at the end of
19 that time, that's it, take them out and shoot them. That's
20 my personal feeling. It does not happen to be the law in
21 this State. I don't think it has to be the law in any state
22 to be perfectly honest with you. But that happens to be the
23 way that I feel about it.

24 THE COURT: It would not be constitutional
25 anywhere.

1 MR. BYCK: Well, I'm not sure about that, Your
2 Honor.

3 THE COURT: Well, we'll debate that later.

4 MR. BYCK: Very well, sir.

5 Q. (By Mr. Byck) Are there any other offenses that you
6 feel that we really ought not to have the questions about?
7 If you're guilty and we find you guilty, that's the end of
8 that.

9 A. I think what I've -- liked hearing this afternoon is
10 the fact that as we go through this thought process of life,
11 death, that what this is actually doing for me is after you
12 go through that first phase of guilt, of actually questioning
13 for a second time are you really sure that indeed this is the
14 situation as you see it, and reevaluating what has occurred
15 and trying to be understanding of all the facts that have
16 been presented, and I think -- at least in my mind, it would
17 give me more confirmation that ultimately whatever my
18 decision would be would be the correct one.

19 Q. I see. Essentially, when we're talking about a
20 capital murder case, we're talking about two different
21 phases, the guilt or innocence phase and then the punishment
22 phase. The guilt/innocence phase is really not interested in
23 the individual as an individual. It's interested in the
24 elements of the offense as you see them written on that
25 paper. Did it happen in Dallas County? Did a named person

1 do it? Did a named person do it to another named person?
2 Did they do it in the manner and means that we specified? It
3 is -- and nobody asks, you know, if that person had an abused
4 childhood or one thing or another. It's only when we get to
5 the special issues that we reach those questions.

6 In Texas we had a real problem before the last
7 couple of years, and that is upon conviction of a capital
8 murder, an intentional murder plus an underlying felony,
9 there were two punishments, just like there are now. One was
10 death. Everybody knew what that meant. The other one was
11 life in the penitentiary, and we are forbidden to tell our
12 jurors what life in the penitentiary meant. Well, we were
13 faced with a bunch of people of good conscience who come down
14 here to volunteer to serve their county, to sit in judgment
15 of another human being. They hear a horrific murder case and
16 another underlying offense, and then they are presented a
17 punishment option which goes lethal injection or life in the
18 penitentiary, whatever life in the penitentiary means. And
19 there are a lot of people our age, very frankly, that
20 remember when you went to the penitentiary for life and got
21 out in 5 years or 7 years or 10 years. There are a lot of
22 people who had no idea how long it would take for a life
23 sentence to be served.

24 We were then presented -- we were then presenting
25 our juries with what I would consider an impossible situation

1 where they were trying to determine whether an appropriate
2 punishment, that is, death, should be given versus a
3 punishment that they very frankly didn't know whether it was
4 appropriate or not. If I write a Penal Code where I say the
5 offense is murder and the punishment is either death or a
6 slap on the hand, gosh, guess what's going to happen? A lot
7 of people are going to die if they get convicted of murder,
8 because the other punishment is not appropriate. It just
9 isn't.

10 Well, we don't have that problem now because now you
11 know that life in the penitentiary means 40 years without
12 parole. And that is also assuming, A, that the individual
13 may or may not get that first parole at the end of 40 years.
14 They may never get paroled. Or, B, they may never survive 40
15 years in the penitentiary to ever get to that stage.

16 What I'm asking you is what you know now about what
17 life is, do you consider the life sentence as opposed to the
18 death sentence an appropriate punishment alternative?

19 A. Yes. After given all the facts presented and that
20 was a conclusion based on how it was presented in this here.

21 Q. All right. What I'm saying is we don't have a
22 situation in your mind where the individual either ought to
23 get death or a slap on the hand. We don't have that
24 situation; am I correct?

25 A. That's correct.

1 Q. You understand, of course, that -- as I've already
2 said about three or four times, capital murder is an
3 intentional murder plus the underlying offense. As I said to
4 you before, we are not going to require you to violate your
5 conscience or your personal moral philosophy. And we
6 sometimes run into problems in the law that essentially do
7 violate people's moral philosophy. And while they may be
8 legal, they're not very rational. And they don't make a
9 whole lot of sense sometimes. The law is a lot of things,
10 but logical it may not be. That's what I believe.

11 Let me give you a really good example of that. Mr.
12 Davis alluded to it, and let me use myself as the perpetrator
13 because if I use somebody else's name, I'll get terribly
14 confused and we'll be here all afternoon. I'm an arsonist,
15 I'm a school arsonist, and that's what I like to do is burn
16 schools. I've been out burning schools, and I've burned a
17 couple of them. They haven't caught me. I went out a couple
18 or three nights ago, and I put together my super school
19 burning solution which is special chemicals that only I know
20 what goes into them. And I went into a school and I laced it
21 with my chemicals and I waited until classes started and I
22 set it on fire and people got hurt and killed and the school
23 burned to the ground. And being a connoisseur of my own
24 handicraft or penmanship or whatever, I'm standing around
25 watching. Well, the police department and fire department

1 not only show up with hooks and ladders and water, they also
2 show up with a video camera. They pan it around to everybody
3 who's watching the fire to see that -- you know, to compare
4 them with other videotapes of fires and start seeing the same
5 faces might be putting two and two together, especially if
6 they're not in the same neighborhoods. And that's exactly
7 what happens. They put together my face. And they don't
8 know who I am, but I'm walking down the street and one of
9 them sees me, calls a police officer, the police officer
10 calls me over and I say, sure, I'll come talk to you. So I
11 go down to the police station and I'm really full of myself
12 and, you know, happy with the smell of charred flesh and
13 burning wood. And I tell them all about it. He gives me my
14 warnings, but like Mr. Davis said, there are four Miranda
15 warnings. You have the right to remain silent, you have the
16 right to have an attorney appointed or you have the right to
17 have an attorney present while we're talking to you, if
18 you're too poor to afford an attorney, we'll appoint one for
19 you, and finally, you have the right to terminate the
20 interview. Well, I'm having a good time down there, you
21 know, I'm attracting a lot of police attention and they're
22 buying me Coca-cola's and crackers and all that and I'm
23 telling them about all my great arson exploits. Give them
24 the secret formula, right, and they, of course, call the
25 lab. The lab says, yeah, that's exactly what it was that was

1 used as the accelerant in this fire and nobody could have
2 known that except the person who set the fire. So they want
3 me to sign a confession, and I do. And they give me my
4 Miranda rights, but they don't give me the last one. They
5 don't tell me I can terminate the interview. I don't ask to
6 terminate the interview. As a matter of fact, one of the
7 officers says, listen, my hand is getting cramped, I'd like
8 to go outside and take a 5-minute break and I say, no, no,
9 no, sit down because this is even going to be better for
10 you. And I don't let him -- don't let him terminate the
11 interview. Okay.

12 We go to trial. Nobody saw me set the fire. I left
13 no fingerprints. There is no DNA. There is no scientific
14 evidence, except the internally consistent evidence of me
15 putting in my confession that I used the specific chemicals
16 and sure enough they bring a chemist down here to say it was
17 those chemicals in those proportions that were used. There's
18 also a few other things that you get to know about me in my
19 trial. You get to know that while I've been upstairs in jail
20 awaiting trial, I've been setting fires. And not only have I
21 been doing that, but I've been asking my cell mates or unit
22 mates or whatever they're called, fellow prisoners, what kind
23 of schools they have in their neighborhoods. Are they brick
24 schools or perhaps wooden schools? Are they old and in need
25 of repainting, a lot of younger kids go there, things like

1 that? When we have my trial, there is no other evidence
2 except my confession. There really isn't. The Judge will
3 instruct you that you've got to find beyond a reasonable
4 doubt that all four warnings were given. If you don't find
5 so, you cannot use the confession.

6 Let me throw in one more fact, and that is no way
7 did the police department sit on my chest and bang my head
8 against the floor until I confess. This was not a forced or
9 coerced confession by any stretch of the imagination, because
10 those you can never use under any circumstances, if they are
11 beaten out of you. So you go back in the jury room and you
12 say, well, we've got us a real problem here. We've got us a
13 school arsonist. He's good at it. And not only that, but he
14 seems to want to do it again. We know he did it. We know he
15 did it because of the chemical evidence, because of the
16 description that he gave in the confession, we know he did
17 it. We also know that there isn't any other evidence that
18 connects except this written confession, and we know that
19 confession wasn't beaten out of him. We know they gave him
20 all the real warnings, but they didn't give him the warning
21 about not wanting to terminate -- or having the right to
22 terminate the interview. This guy not only didn't want to
23 terminate, didn't ask to terminate the interview, he didn't
24 want to terminate the interview. And when the police officer
25 offered to terminate the interview because his hand was

1 getting tired of writing all this horrible stuff down, the
2 defendant said, no, keep on going, I'm having too good a
3 time. Well, the other 11 members of your jury panel are all
4 equally conscientious, equally fair-minded, equally
5 civic-minded individuals, and they go back there and they
6 say, Mr. Gabel, we cannot follow the Judge's instructions.
7 It violates down to the very moral center of my being letting
8 this mass murdering child killing arsonist loose on the
9 flimsiest technicalities that he not only didn't ask for, but
10 he deliberately denied when it was almost mistakenly given to
11 him. Because, you know, if you find me not guilty, I can't
12 be tried for that offense again. And you also know deep in
13 your heart as soon as I get out of jail, I'm going right over
14 to the 7-Eleven, buy a Bic lighter, and head for your
15 neighborhood or somebody else's neighborhood that might have
16 kids and live nearby. This is serious stuff. And your jury
17 foreman and your other 10 members of the jury say won't you
18 please join with us in slowing this monster down. Won't you
19 please join with us in doing the right thing, the rational
20 thing, the reasonable thing, but not necessarily the legal
21 thing and finding this guy guilty, using that confession that
22 he gave, finding him guilty, and then let the law take its
23 course from there, by at least he ain't going home with us
24 tonight. Or would you say, sorry, guys, you know, we've got
25 to be rigid. We've got to rigidly adhere to what the Judge

1 says. If the Judge says we can't consider it, we've can't
2 consider it. We've got to throw it all out, got to find him
3 not guilty, he goes home with us.

4 That's a tough ethical question. It really is.
5 What would you do?

6 A. Well, I do feel strongly that there is a reason why
7 we have the laws. I think there's a reason why the Judge's
8 comments should prevail. And again, because it is a life or
9 death type of situation that we're dealing with, that we
10 should literally exhaust every possibility or possibilities.
11 And as well if there are situations that arise in which
12 there's question, again it's got to be proven beyond -- the
13 cause and everything to insure that we're doing the right
14 thing.

15 Q. You'd turn me loose?

16 A. If that's the way --

17 Q. You'd vote not guilty?

18 A. If that's the way the law was, yes.

19 Q. Okay. Let's talk a little bit about Special Issue
20 Number 1. That, of course, is only found and you only
21 consider that after you find an individual guilty. And at
22 that point, sir, something very strange is going to happen
23 because while Judge Entz is going to define every word in the
24 document in front of you, he's going to tell you what on or
25 about means. He's going to tell what you kidnapping means.

1 He's going to give you the elements of robbery. He's
2 going -- he's going to define every word that you need to
3 have defined. And he will do it exhaustively and completely
4 with every -- everything that you need to know to find an
5 individual innocent or guilty. When it comes to punishment
6 stage, he's not going to define anything for you. He is not
7 going to give you a written definition of any of those
8 words. Therefore, the definition of those words are up to
9 you. And they are not susceptible to any judicial
10 second-guessing or hand-holding or direction finding or
11 whatever you want to call it. You're going to get no help
12 from the Court in the meaning of those words.

13 In the context of our capital murder situation you
14 are going to be asked, after you find somebody guilty,
15 whether there is a probability that the defendant would
16 commit criminal acts of violence that would constitute a
17 continuing threat to society. The Judge is not going to tell
18 you what society means. He is not going to tell what you a
19 continuing threat means, versus an occasional threat, versus
20 an every once in a while threat, versus a -- whatever. He's
21 not going to tell you what those words mean. He's not going
22 to tell you what a criminal act of violence is, and he's not
23 going to tell you what probability means.

24 In the context of Special Issue Number 1, after the
25 conviction of an individual for capital murder, what do you

1 think the word "probability" means?

2 A. That it's something that could occur without
3 necessarily a specific date, timing, or place down the road.

4 Q. Okay. Probability is a tough word to handle for a
5 couple of reasons, one of which is pretty good and that is
6 it's a word of art in mathematics. It has a very special
7 meaning, and its meaning is in mathematics if it's not
8 impossible, it's probable. And whether it's highly probable
9 or less likely probable or a little bit probable or a lot of
10 probable is -- that's what mathematics is all about in terms,
11 you know, of what that specific stage is.

12 Here I think we have a continuum choice of words
13 from mere chance to possibility, to probability, to
14 substantial certainty, to faith certain, you know, whatever,
15 100 percent, it's going to happen. Some people use the
16 continuum as a continuum of numbers. Possibility, you know,
17 chance 2 percent, possibility 20 percent, probability over 51
18 percent, or less than 51 percent, depending on your
19 definition. And then certainty certainly higher percentage.
20 If you had to give a percentage probability to the definition
21 of probability -- boy, does that sound off -- where would you
22 fix it in terms of numbers, in the context of this question?
23 How probable would probable have to be in order to convince
24 you that the probability existed in this question?

25 A. I don't think I would give a specific percentage, a

1 number to that.

2 Q. Okay.

3 A. Because it -- even the slightest, I think, is what I
4 would have to evaluate at that point.

5 Q. Okay. Let's talk about that. You are unwilling to
6 say that probability means more than 51 percent likelihood?

7 A. Yes, that is correct.

8 Q. Right. You define the word "probability" to mean as
9 something that could occur, a chance that it could occur.

10 A. Uh-huh.

11 Q. A mere chance, a little chance, a big chance, or
12 just any chance at all?

13 A. I think any chance would be my --

14 Q. Any chance at all?

15 A. Uh-huh.

16 Q. Okay.

17 (Discussion between defense counsel.)

18 Q. (By Mr. Byck) If you could pick a synonym for the
19 word "probability" as you would define it and as you would
20 utilize it if you were a juror in a capital murder case in
21 Question Number 1, what synonym would you use for the word
22 "probability"?

23 THE COURT: What word or words or phrase?

24 A. Probably the word "chance." The possibility of an
25 occurrence, the possibility of that chance that it would

1 occur.

2 Q. (By Mr. Byck) Possibility or chance then?

3 A. Uh-huh.

4 Q. All right. Fair enough.

5 THE COURT: Would you be comfortable with more
6 like than not, or not?

7 VENIREPERSON: Probably more likely than not,
8 more.

9 THE COURT: Would you consider that as a
10 phrasal equivalent to probability in the context of Special
11 Issue Number 1 or not?

12 VENIREPERSON: Yes, I would.

13 THE COURT: Defense may continue.

14 Q. (By Mr. Byck) All right. Now, I'm getting a little
15 confused here. You said probability was a chance, and then
16 you said probability meant more likely than not. If we have
17 a stack of likelies and a stack of unlikelies, all right, the
18 more likelies than not would have to out number the likelies.
19 Right? And if we had a hundred of them, various likelies and
20 unlikelies, we would have to have 51 likelies and 49
21 unlikelies. Or would we have to have less likelies in order
22 to reach your definition of probability? I know you don't
23 like to be quantified. Nobody likes to be quantified.
24 It's -- sometimes it's really almost -- it's almost
25 impossible to ask somebody to quantify an ideal like this.

1 But still, we've got to know because a mere chance -- or, you
2 know, is one chance out of a hundred to me. A chance is five
3 chances out of a hundred. A good chance is 20 chances out of
4 a hundred. And I'm still 30 away from more likely than not.
5 A possibility, since anything is possible, is from one chance
6 out of a hundred to 49 chances outside of a hundred. If it
7 goes beyond possibility, in my mind, it goes to a
8 probability. That is a more likely than not situation, but
9 I'm not on this jury, sir, and I'm not defining probability.
10 It's not my definition that's important or that counts. It's
11 yours. And that's why I need to know as clearly as you can
12 tell me in the context of how we've been talking about it,
13 what does probability mean to you.

14 A. If we're trying to use the term of "beyond a
15 reasonable doubt," for example, I think what we're trying to
16 do with the word "probability" is exhaust all of that and
17 whether that's a greater percentage or a smaller percentage,
18 I think it's again insuring in your own mind that you've kind
19 of weighed everything possible to arrive at, you know, that
20 word "probability."

21 Q. Well, let me give you -- let me give you an example,
22 and that's a very good answer. I'm not disputing your
23 answer. My problem is, is I'm dealing a capital murder jury
24 where they have already found an individual guilty of the
25 offense of capital murder, and they are in good conscience

1 trying to resolve whether this individual is going to be a
2 threat to the future of such a character and of such a danger
3 that they ought to kill him rather than give him a life
4 sentence in the penitentiary. And I can have people saying,
5 listen, that was a really bad offense, a really, really
6 horrible, horrible offense. And I think this kid ought to
7 die, so therefore I'm going to make probability mean a mere
8 chance. If it could happen, and they prove to me beyond a
9 reasonable doubt there's a possibility, there's a snowball's
10 chance in Hades that it could happen. I'm going to vote yes
11 to Question Number 1, right? There are other people who
12 think, well, you know, yeah, that was a terrible offense, but
13 human life is sacred and we can't bring back the victim's
14 life, so, you know, I don't want somebody to die unless you
15 prove to me probability means that he's so likely to do it as
16 to bet against it would be stupid. I don't want to get back
17 to numbers again, but I think you can see the difference.

18 A. Uh-huh.

19 Q. You know, there are -- and both definitions fit the
20 word "probability," and that's why I need to know if
21 probability means more likely than not, which means greater
22 than a 50 percent chance, a 51 percent chance, or does it
23 mean a mere chance, less than that, any possibility, any
24 possibility at all, or a little bit bigger possibility, but
25 something less than a 50/50 coin toss. And I'm going for

1 yes. Is that the way you think about it, or not?

2 A. I would follow your former statement.

3 Q. Which was?

4 A. Which basically if there's any possibility or any
5 inkling or chance that this could occur, whether it's a day
6 from day or month from now or year from now situation, but in
7 your own mind feeling that based on the facts presented, that
8 you would believe or I would believe that this could occur or
9 could occur again.

10 Q. Fair enough. Fair enough. We've run around on this
11 issue, and very frankly I think I've been the one that's been
12 doing most of the running. I think you pretty much stated
13 your position, and, you know, sometimes I'm trying to pound
14 little round pegs into square holes for legal reasons, but
15 believe me, sir, if anybody has been unclear down here, it's
16 been me. It has not been you. And I appreciate that.

17 MR. BYCK: And I'll pass the venireman, Your
18 Honor.

19 THE COURT: Mr. Madore, if you'd excuse the
20 prospective juror momentarily, please.

21 VENIREPERSON: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Venireperson leaves the courtroom.)

24 (State no challenge for cause - Mr. Gabel)

25 MR. DAVIS: The State has no challenges for

1 cause.

2 (Defense challenge for cause - Mr. Gabel)

3 MS. BALIDO: Judge, the defense would
4 challenge for cause based on his own definition of
5 probability as to any inkling that the defendant could do it
6 again.

7 (Challenge for Cause Granted)

8 THE COURT: Defense challenge for cause
9 granted.

10 (Venireperson brought into courtroom.)

11 THE COURT: Hello, Ms. Lawley. You've been
12 waiting long and patiently for us. I trust you're ready to
13 proceed; am I correct?

14 VENIREPERSON: That's correct.

15 THE COURT: We're ready as well. We'll begin
16 with the State. Again, on behalf of the State, the Honorable
17 Mary Miller.

18 JO LAWLEY

19 was called as a venireperson by the Court and, after having
20 been first duly sworn, testified as follows:

21 Voir Dire Examination

22 By Ms. Miller:

23 Q. Good afternoon, Ms. Lawley. I just want to remind
24 you and reiterate what the Judge had said earlier, that there
25 are no right or wrong answers to any of the questions as long

1 as you let us know what your true feelings are about the
2 areas that we question you about. Make your yourself
3 comfortable. A lot of people get kind of nervous when
4 they're up there, but if you don't understand something, let
5 me know and I'll be more than happy to rephrase it for you.

6 Now, you were one of them that was brought in with
7 about the 500 other people about a month and a half ago; is
8 that right?

9 A. That's right, in March.

10 Q. So you've had a while to sit and think --

11 A. I never thought I would be here.

12 Q. The wheels turn slowly. And I think you had even
13 put in here that that might be one of the problems or
14 whatever.

15 I want to -- I want to direct your attention back to
16 when you were in the Central Jury Room and Judge Entz made
17 introductions with everyone, and he -- in particular when he
18 introduced the defendant, Jedidiah Isaac Murphy, and told you
19 that basically you were here for a capital murder case, that
20 the State of Texas was in fact seeking death against the
21 defendant.

22 Do you recall what your first impression was when
23 the Judge told you that?

24 A. No, I didn't have any adverse feeling one way or the
25 other.

1 Q. Okay. Just, okay, well, I'm here --

2 A. Yeah. Yes.

3 Q. -- type thing?

4 A. Yes, that's right.

5 Q. Now, I notice that you have been on a jury before.

6 You had put armed robbery. Was that here in Dallas?

7 A. Yes, it was.

8 Q. Do you recall how long ago that that was?

9 A. Oh, it's been a long time, 25 years maybe.

10 Q. Was there anything about that particular situation
11 or jury service that might affect you in this case?

12 A. No.

13 Q. Okay. Nothing about -- no grudges against the
14 defense or the State or anything like that?

15 A. Definitely not.

16 Q. Okay. Because some people have very bad experiences
17 on prior jury service such that they say, look, because of my
18 experience I can't serve.

19 A. No.

20 Q. When you filled out the questionnaire, and I realize
21 it's been a month and a half ago, but you originally said
22 that you were in favor of the death penalty. And it said
23 please explain your answer and you didn't put anything
24 there.

25 A. No.

1 Q. You've obviously had about a month and a half now to
2 think about it, and a lot of people, when they are filling
3 out the questionnaire say, yeah, I do in fact believe in the
4 death penalty, don't have any problem with it, as a matter of
5 fact, in certain circumstances I think it is in fact
6 appropriate.

7 Now you've had about a month and a half to think
8 about it and you're actually in the hot seat now and it
9 becomes a little more real. It's not quite so abstract. And
10 if you look over at the defendant, you can see there's
11 nothing abstract about him. He's a living, breathing human
12 being. And if the State prevails in this case and the jury
13 finds the defendant guilty and answers Special Issues Number
14 1 yes and 2 no, the defendant -- the defendant will be
15 sentenced to die because the Judge will have no other legal
16 choice but to follow the jury's verdict. And as you know, in
17 Texas the death penalty is a reality. As a matter of fact,
18 there was a death row inmate who was executed late last night
19 or early this morning. Unlike California where people can be
20 sentenced to death, but then it's never really carried out,
21 it is here in Texas. So if the State of Texas succeeds in
22 the prosecution, there will come a day in the future where
23 the defendant is basically taken to Huntsville, strapped down
24 on a gurney, have an I.V. placed in his arm, have the I.V.
25 turned on, and within about 15 minutes he would lay dead on

1 that gurney.

2 Now, as I said, there's people who think in the
3 abstract, no problem. But there may come a day where you
4 actually have to take pen in hand and sign your name to that
5 verdict, such that the Judge would be required to sentence
6 the defendant to death.

7 How do you personally feel about being able to
8 participate in that? Some people say I still believe in it
9 in the abstract, I just can't do it. Other people say, I
10 don't have any problem participating. Either way, we'll say
11 fine, okay. If you can, great. If you can't, great. We'll
12 go on to the next person also.

13 Now, how do you personally feel, Ms. Lawley?

14 A. I think that if the verdict is reached that it's
15 guilty and that I would have no problem --

16 Q. Okay.

17 A. -- saying -- or signing my name to a death -- if
18 that was what was warranted.

19 Q. Okay. So if the State proved that it should be so,
20 that he was in fact guilty beyond a reasonable doubt and that
21 we proved that Special Issue Number 1 should in fact be
22 answered yes and then after looking at all the evidence, you
23 decided Special Issue Number 2 should be answered no, such
24 that the defendant would receive a death sentence, you --
25 you're basically telling me you do not have a problem being

1 able to participate in that?

2 A. That's correct.

3 Q. Okay. Now that you've had a chance to think about
4 it, do you have an explanation as to why you are in favor of
5 the death penalty?

6 A. I don't know how to put it into words. I think that
7 there are circumstances that warrant a death penalty. And I
8 guess after all the evidence is presented, that, yes, I think
9 that a person should pay for it --

10 Q. All right.

11 A. -- if that's indicated.

12 Q. Well, and as the Judge said, the death penalty is
13 only available for capital murder. It's not available for
14 just plain murder.

15 A. I understand.

16 Q. Plain murder, the penalty range is anywhere from 5
17 years up to 99 years or life. Capital murder, you have to
18 have the murder plus something else. In this particular case
19 it's murder during the commission of a robbery or a
20 kidnapping.

21 Let's talk about regular murder for an instant --
22 for a minute. In murder you have a specific intent to take
23 someone's else's life. I take a gun out and I kill Ms. King,
24 shoot her ten times for whatever reason and I'm jumping up
25 and down, laughing, clapping, and really bragging about it.

1 That's a very heinous offense, but it's still just murder
2 because there is not that additional element such as if I
3 took her computer or took the money from her purse. That
4 would make it capital murder. But just the mere fact that I
5 shot her ten times, even though I intended to kill her, that
6 is murder and not capital murder.

7 Do you see the difference?

8 A. Yes, ma'am.

9 Q. Okay. Now, for regular murder, as I said, the
10 penalty range is anywhere from 5 to 99 years or life. There
11 can be a different type of specific intent to kill, too. I'm
12 mother of two. I know that you have some children, also.
13 Say that one of my children is 12 years old. And one of the
14 neighborhood kids we find out is a drug dealer. And as much
15 as I try and keep my 12-year-old away from the neighbor, the
16 neighbor gets my child involved with crack cocaine. The
17 neighborhood child is a crack dealer and gets my child hooked
18 on crack cocaine such that my child will never be the same
19 again. I go down and I have tried everything through the
20 legal system, through talking with that person's parents,
21 everything. And I am just at my wit's end and I go down
22 there and kill the crack dealer. That's a specific intent to
23 kill, also. A little bit different perhaps than me shooting
24 Ms. King ten times just because.

25 Some people would say, well, that's a little more

1 justified, it was just a drug dealer and you were a parent
2 who was concerned about your child and frustrated. Also, you
3 can have a euthanasia, a 90-year-old --

4 MS. BALIDO: Judge, I'm going to object to the
5 use of this. Trying to qualify a juror on euthanasia --

6 THE COURT: Again, overruled.

7 Q. (By Ms. Miller) -- a 90-year-old husband who's been
8 married to an 89-year-old woman, had been married for a long
9 time, had raised children, beautiful grandchildren children,
10 but she was diagnosed with terminal cancer. The doctors
11 could do nothing further to help keep her from suffering.
12 They discuss it one evening and she begs him to help put her
13 out of her misery. He is -- he doesn't really want to do it,
14 but he can't stand to see her suffer anymore, so he turns off
15 the machine. Morally justifiable? Most people would say
16 yes, that that was an act of love. But it still is a
17 specific intent to kill. It was not legally justified. That
18 is still murder. So you see, you have three different fact
19 scenarios that I've given you just here. There's a million
20 different fact scenarios, and that's why the legislature has
21 given us such a wide range of punishment for murder, 5 years
22 to 99 years or life.

23 What we need to know is, can you wait and listen to
24 the facts and assess your verdict -- if it was just murder
25 that the defendant was found guilty of, can you assess your

1 verdict somewhere within that penalty range and give as
2 little as 5 years in the penitentiary for an intentional
3 murder, all the way up to 99 years or life?

4 Now, we don't -- you don't have to tell us what you
5 think -- what type of murder you think would be worth 5
6 years, but if you heard it and in your heart of hearts you
7 believed that it was -- that 5 years was appropriate, could
8 you and would you give it?

9 A. Yes.

10 Q. Okay. All the way up to 99 years or life? Some
11 people say, look, I could never give that much, but if you
12 felt that it was appropriate, based on the facts, could you
13 and would do you that?

14 A. Yes.

15 Q. So if I hear you correctly, you're saying that you
16 would want to hear all of the facts and circumstances, you
17 would wait, consider the entire range, and then basically
18 reach your verdict according to what you felt was
19 appropriate, based on the law and the evidence?

20 A. Absolutely.

21 Q. Okay. Now, when you talked about what's the best
22 argument in opposition of the death penalty, it says
23 circumstances of self-defense. Self-defense is basically a
24 legal justification or excuse for murder or capital murder.
25 And if you believed that the defendant was acting in

1 self-defense, then he would be found not guilty so you
2 wouldn't even get to the punishment phase of the trial.

3 Do you understand that part?

4 A. Yes.

5 Q. Okay. Let's talk about the special issues over
6 here. Once you get to the special issues, you have already
7 found the defendant guilty of capital murder. And the
8 indictment is right there on the stand there in front of
9 you. That's what the State must prove beyond a reasonable
10 doubt in order for you to find the defendant guilty. And
11 each and every one of those elements is just as important as
12 any other. You notice it says Dallas County in there. We
13 have to prove that beyond a reasonable doubt, just like we
14 would have to prove that it was the defendant. That it was a
15 shooting or a drowning. That it was during the course of a
16 robbery or kidnapping. Because see, we have the burden of
17 proof. The defendant doesn't have to prove anything, and I
18 see you shaking your head yes. And I assume you agree with
19 that part of the law?

20 A. Yes.

21 Q. In your questionnaire, you had said that you agreed
22 that the defendant didn't have to prove his innocence.
23 That's because the State must in fact prove his guilt beyond
24 a reasonable doubt. So when you're looking at that
25 indictment, some people call it a technicality. Say that we

1 proved to you beyond a reasonable doubt each and every
2 element in there other than Dallas County. Say that myself
3 or Mr. Davis just flat forgot to ask it, or even though you
4 know it occurred in Dallas County or it occurred -- actually
5 occurred in Tarrant County, some people would call that a
6 technicality, but if we did not prove that to you beyond a
7 reasonable doubt, also, just like everything else in that
8 indictment, then the Judge would tell you that according to
9 your oath and according to the law, you would have to find
10 the defendant not guilty because we did not meet our burden
11 of proof. You might not like it, you might be mad as all get
12 out at us. We wouldn't have our jobs anymore if that's what
13 we had done.

14 But do you have the strength and moral fortitude and
15 mental discipline to say even though I don't like having to
16 do it, I can in fact follow the law and find the defendant
17 not guilty?

18 A. I can do that.

19 Q. Okay. So when we get over here to the special
20 issues, you've already found the defendant specifically
21 intended to kill Bertie Cunningham, that it was with a -- by
22 a shooting or a drowning, and it was during the commission of
23 a robbery or a kidnapping. Okay?

24 A. All right.

25 Q. Then we're not interested in the guilt/innocence

1 anymore. We're looking at the punishment phase. Should the
2 defendant receive the death penalty, or is he going to
3 receive life in the penitentiary. And as the Judge said, in
4 Texas we assume it's going to be life in the penitentiary
5 unless and until these two special issues are answered such
6 that the defendant should receive death.

7 Now, looking at Special Issue Number 1, to remind
8 you, as the Judge had said, we have the burden of proof.
9 When you go into Special Issue Number 1, you have to presume
10 that it should be answered no. So even though you've already
11 found this person guilty of committing a horrendous capital
12 murder, a lot of people say, well, look, I would always
13 answer that yes because if they could do that, then I'm going
14 to think they're always going to be a future danger. But
15 what the law requires you to do, Ms. Lawley, is step back and
16 take a new look, a separate look at the evidence, because
17 some of the evidence that may be important won't come in
18 until the punishment phase of the trial, as I'm sure you're
19 aware of when you sat on the trial before. The defendant's
20 prior criminal history does not come in until the punishment
21 phase.

22 A. Right.

23 Q. Character evidence, those types of things are not
24 admissible until then. So even though you may not have --
25 even though a person -- a defendant might not have a prior

1 criminal history and you may say, look, the facts of the
2 offense alone are heinous enough that I could answer that
3 yes, what you have to do is make sure that the State has
4 proved it to you beyond a reasonable doubt through the
5 evidence.

6 Do you have the discipline to require the State to
7 do that?

8 A. Yes.

9 Q. Or are you going to be one of the types of people,
10 and if you are that's okay, and we need to know that. Are
11 you always going to answer Special Issue Number 1 yes, just
12 because you found somebody guilty of that offense?

13 A. No.

14 Q. Okay. When you're looking at Special Issue Number
15 1, what types of evidence or things -- and don't worry about
16 whether it's legal or not, but what types of things do you
17 think you would want to hear in order to be able to answer
18 Special Issue Number 1?

19 A. Well, whether or not there has been a previous
20 history of crime and anything else relating to the
21 individual, his personality type, his violence or whether --
22 in that respect. I guess that's all.

23 Q. Okay. And that's -- that's the same thing a lot of
24 people have told us when we've been questioning them. They
25 say the best predictor of the future, which is what this is

1 really asking you to look at, is the past. And as I said,
2 you may have a defendant who has been a pillar of the
3 community. He has led an exemplary life, always held a job,
4 has never been in trouble before and this was the first time
5 he had ever been in trouble, but he did it big time this time
6 and committed a capital murder. Or -- but you may think that
7 the murder -- the capital murder was heinous enough that you
8 still think he's going to be a future danger. You may think,
9 no, this was something without anything else in his
10 background, I don't think he's going to be a future danger.
11 Or you may have someone who has been in and out of trouble
12 for his whole life, who has been within the system, the
13 system has given him opportunities to try and rehabilitate
14 himself, and he's thumbed his nose at it.

15 Are those the kind of things that you're saying
16 you'd like to know?

17 A. Yes. I'd just have to know some more of the
18 evidence.

19 Q. Okay.

20 A. And what's there.

21 Q. Well, when you see the word "probability," you
22 notice that the legislature -- in the first phase of the
23 trial, and as I'm sure you remember when you got that jury
24 charge, there were a whole bunch of legal definitions in that
25 jury charge when you served on a jury before. And you'll

1 have a whole bunch of definitions in the jury charge during
2 the guilt/innocence phase, also, where the Judge will be
3 defining different legal terms. However, when we get to the
4 special issues here, most of the terms are not going to have
5 a legal definition, and it's going to be basically kind of
6 whatever you say it is.

7 However, I want to point out a couple of things
8 here. Probability, the legislature didn't say that the State
9 had to prove it to a certainty. They also didn't say that we
10 had to prove it by only a mere chance or possibility. But
11 they used the word "probability."

12 Now, some people say probability to them is any
13 chance whatsoever, even a mere inkling, but you see there
14 that they used the term "probability," and most people say
15 probability to them is more likely than not, or 51 percent.
16 Like when you hear the weatherman, Troy Dungan or whoever it
17 happens to be, say there is a 50 percent chance of rain.
18 Well, it's just as likely that it might rain as not. It
19 doesn't become probable or more likely than not until it gets
20 to a 51 percent chance of rain. Of course, in Texas we never
21 know with those percentages.

22 A. That's right.

23 Q. But that's an example that sometimes people use.
24 When you're looking at Special Issue Number 1 and you see the
25 term "probability" that the defendant would commit criminal

1 acts of violence, is the more likely than not basically the
2 kind of definition, the 51 percent that you would be looking
3 at?

4 A. That's what probability means to me.

5 Q. Okay. Criminal acts of violence. You see there
6 that the legislature didn't say that we had to prove that the
7 defendant would commit future capital murders. They also
8 didn't say that we would have to prove that he would commit
9 future murders, but they also didn't say that we would only
10 have to prove that he would commit criminal acts. They added
11 that qualifier criminal acts of violence.

12 When you hear that phrase or term, what originally
13 comes to mind for you?

14 A. Criminal acts of violence?

15 Q. Yes, ma'am.

16 A. Well, I think violence is criminal, so --

17 Q. Okay.

18 A. Any sort of abuse -- I guess physical abuse. I
19 don't know.

20 Q. Basically would -- some people say, well, really to
21 be a criminal act of violence, it needs to be perpetrated
22 against or towards someone. Any type of criminal act that
23 would place another in fear of imminent injury or actually
24 injure someone else, versus there can be an act of what some
25 people consider violence. If I took a sledge hammer and

1 started beating up the Coke machine because it took my 65
2 cents, that's -- you know, most people would say that's not
3 really -- even though it might have been violent, it wasn't a
4 criminal act of violence because it wasn't really perpetrated
5 toward a human being.

6 A. A person. That's right -- I mean, yes, that's the
7 way I feel.

8 Q. That's the way you feel?

9 A. Yeah.

10 Q. Now, society. The term "society." As I said, the
11 Judge isn't going to give you a definition for that, but when
12 you read Special Issue Number 1 and you look at the term
13 "society," what definition or -- usually comes -- or comes
14 to mind for you?

15 A. Well, the general public, your neighbor, your
16 business associates.

17 Q. Okay. Some people say that because when you're
18 looking at Special Issue Number 1, you know the defendant is
19 looking at a life sentence now because you've already found
20 him guilty. And as the Judge told you, the life sentence in
21 a capital case is a minimum of 40 years. So some people say
22 society should be limited to people in the penitentiary
23 because that's where the defendant is going to be confined.
24 The legislature and law does not require society to be
25 limited to that.

1 However, do you think that people that are in the
2 penitentiary, chaplains, nurses, wardens, guards, and even
3 other inmates have the right to be free from criminal acts of
4 violence being perpetrated against them?

5 A. Yes, I guess so.

6 Q. Okay. Just because they might have broken the law,
7 does that mean that they should have --

8 A. No.

9 Q. -- people being able to beat up on them or commit
10 acts of violence against them?

11 A. No.

12 Q. Other people say, no, society shouldn't be just
13 limited to people in prison. It should include everyone?

14 A. Yes.

15 Q. Have you heard of Texas 7? Now it's down to six, I
16 guess, since one killed himself. Some of those -- some of
17 those defendants were actually serving life sentences in the
18 penitentiary. They were able to escape, made their way to
19 Arlington, committed an aggravated robbery, and then
20 killed --

21 THE COURT: Irving.

22 Q. (By Ms. Miller) I'm sorry, Irving. -- and killed
23 an officer during the commission of that. Some people say
24 society basically should include anywhere the defendant may
25 find himself or anyone the defendant may come in contact

1 with. In other words, everyone. It shouldn't be limited in
2 its scope.

3 How do you feel about that when you're looking at
4 Special Issue Number 1?

5 A. Well, if he's -- if he's not in -- to me, that says
6 society is the world around. I mean, it does not necessarily
7 mean include prison, because he's not in prison when we're
8 discussing this --

9 Q. Okay.

10 A. -- special issue. We have to decide whether he
11 should be or she should be a threat to the general public
12 first because that's where they are, not in prison at that
13 time.

14 Q. But when you're looking at Special Issue Number 1,
15 and I'm not arguing with you.

16 A. It's okay.

17 Q. Just so -- because I'm sure it will be pointed out
18 to you if I don't point it out to you that when you're
19 looking at Special Issue Number 1, he is already going to be
20 serving a minimum of 40 years in the penitentiary when you
21 get to Special Issue Number 1 because you've found him
22 guilty.

23 A. Okay.

24 Q. So you know that's where he's going to be housed if
25 he doesn't receive the death -- well, he'll be there even if

1 he receives the death penalty. But do you see where they're
2 saying that prison should also be and the general public
3 because you never know, could escape, could do a lot of
4 different things?

5 A. Okay.

6 Q. Are you going to exclude people from the
7 population --

8 A. That would never even enter my mind.

9 Q. Okay. Do you see where that might be included in
10 the word "society"?

11 A. Might be.

12 Q. All right. Do you have any questions about Special
13 Issue Number 1?

14 A. No.

15 Q. Have I thoroughly confused you?

16 A. Uh-huh. No, not really.

17 Q. Sorry about that.

18 A. Not really.

19 Q. Okay. Let's look at Special Issue Number 2. If the
20 State has -- if you've answered Special Issue Number 1 yes,
21 okay, you've already found the defendant guilty of a capital
22 murder and you've answered Special Issue Number 1 yes because
23 the State proved it to you beyond a reasonable doubt. The
24 defendant is going to be sentenced to death at that point.
25 What Special Issue Number 2 does is acts as a safety net. It

1 basically asks the jury to re-examine all of the evidence,
2 regardless of when it came into evidence or how it came into
3 evidence, be it from the State's witnesses or the defense
4 witnesses. And in Special Issue Number 2, neither side has
5 the burden of proof, so even though we've had as the State
6 the burden of proof of proving beyond a reasonable doubt that
7 the defendant was in fact guilty and we have to prove beyond
8 a reasonable doubt that the defendant is going to -- probably
9 going to be a future danger, we don't have to prove -- we
10 don't have the burden of proof that Special Issue Number 2
11 should be answered no in order for the defendant to receive
12 death. But neither does the defense have the burden of
13 proving that it should be answered yes such that you change
14 your death sentence back to one of life. Basically you just
15 take all of the evidence, no matter where it came from, look
16 at it, sift through it, and say, hey, I understand that I
17 said that he was guilty. I understand that I said he's
18 probably going to be a future danger to society, and, boy,
19 that might be very hard, but I have the discipline to look at
20 all of the evidence again and say, whoa, you know, wait a
21 minute, there is something sufficiently mitigating that I am
22 going to change a death sentence back to one of life.

23 Some people say, huh-uh, if I found him guilty and I
24 think that they're a future danger, I will never answer that
25 question yes such that he would receive life instead of

1 death. But see, that's not what the law contemplates and
2 that's not what the law requires. It requires you to make
3 that separate evaluation.

4 Ms. Lawley, do you have the discipline to be able to
5 do that? Even though you've said that he's going to be a
6 future danger and he may have committed a very heinous
7 capital murder, can you still change a death sentence to one
8 of life if you think that there are sufficient mitigating
9 circumstances to warrant it?

10 A. I wish I could say no, but I'd have to say yes. I
11 do have the discipline to do that.

12 Q. Okay. And we aren't asking you what those
13 mitigating circumstances would be because you might not be
14 able to tell us.

15 A. That's right.

16 Q. But if you heard them and in your heart of hearts
17 you thought that that was in fact appropriate, you're telling
18 this Court and you're telling us that even though you might
19 not be real happy about it, you could do it?

20 A. I could do it.

21 Q. Okay. Let's look -- look at mitigating
22 circumstances as -- what the Judge told you is there's not a
23 laundry list of mitigating circumstances. It's basically
24 whatever you say they are. You may say something is
25 mitigating, and I make look at that very same piece of

1 evidence and I say that's not mitigating, that's
2 aggravating. A third juror may look at it and say, well,
3 it's not mitigating or aggravating, it's just kind of a wash.
4 So when you're looking at Special Issue Number 2, you're
5 going to first of all decide whether you believe the
6 evidence. Just because evidence comes in doesn't mean that
7 you have to believe it. So you have to determine the
8 credibility or believability of the evidence first.

9 Do you see that?

10 A. (Nods head.)

11 Q. Second -- and that's obviously something you did on
12 your last jury service.

13 Second, you're going to have to determine whether or
14 not you believe that evidence is mitigating. Since you're
15 not going to have definition of mitigating or a list of what
16 mitigating evidence is, it's basically whatever you say it's
17 going to be. So you have to look and see whether you believe
18 it's believable and credible and then you have to see whether
19 you think it in fact mitigating. Thirdly, you have to look
20 and see whether it's sufficiently mitigating to change a
21 death sentence back to life. Just because you think it's
22 mitigating, you might not think it's sufficiently mitigating.

23 Now, you may have a hundred pieces of mitigating
24 evidence, but you don't think that it rises to the level of
25 sufficient to change death to life, or you may have one piece

1 of mitigating evidence and you think, hey, that's
2 sufficiently mitigating. So it doesn't matter the quantity.
3 What matters really more is the quality, as to whether you
4 think that it is sufficiently mitigating to change death back
5 to life.

6 One of the mitigating circumstances that people say,
7 and I think the Judge said, was age. Some people say if an
8 offender is extremely youthful, then that may be mitigating.
9 Other people say, no -- and in Texas a person has to be 17
10 years of age before they can receive the death penalty. Some
11 people say, no, if that person has reached the age of
12 accountability, they understand the consequences of their
13 actions, then age really doesn't play any factor as far as
14 mitigation to me.

15 How do you feel about that, Ms. Lawley?

16 A. I don't think age, just off the top of my head.

17 Q. Right.

18 A. Really.

19 Q. We're not trying to commit you one way or another.
20 I'm just kind of telling you some of the different things
21 that people have said might be mitigating. Some people say
22 age wouldn't. Some people say, well, I'd have to hear more
23 facts. Some people say age in of itself wouldn't be.

24 Drugs and alcohol -- and your daughter, I believe it
25 was, had a problem; is that correct?

1 A. That's correct.

2 Q. And you said that she had been clean for 10 years?

3 A. That's right.

4 Q. Had gone through a treatment program?

5 A. That's right.

6 Q. Did she go through it because of -- was it a drug
7 related offense that she was arrested for and it was dropped?

8 A. No, they were separate.

9 Q. Okay. Was she required to go through --

10 A. No.

11 Q. Okay. Did she do it voluntarily?

12 A. Yes.

13 Q. Okay. Do you think that all people can be
14 rehabilitated?

15 A. From what?

16 Q. From anything?

17 A. That's a pretty broad statement. Do I -- you want
18 to restate that?

19 Q. Do you think all people are capable of being
20 rehabilitated?

21 A. No, I do not believe that all people are capable of
22 being rehabilitated.

23 Q. What do you think might make the difference between
24 one person being capable of it and another not?

25 A. When you're speaking of rehabilitation, I think it's

1 a difference between rehabilitation for drugs, rehabilitation
2 for criminal acts. And I think that, no, not all people can
3 be rehabilitated from drugs.

4 Q. Okay.

5 A. And why? Because some people are stronger than
6 others and they have more of a desire. They have perhaps for
7 some reason or other have a better self image of themselves
8 than others, so those could be rehabilitated. People with --
9 from drugs or alcohol. And as far as pedophiles, I have a
10 hard time thinking that they could be rehabilitated.

11 Q. Okay.

12 A. If you want to give me more specifics, I can tell
13 you --

14 Q. Okay.

15 A. -- what my feeling is on that, but I think each one
16 of them has its own --

17 THE COURT: Ms. Lawley, have you been talking
18 to my court reporter about pedophiles? She seems to fall in
19 the same category as you. I just wondered if you -- no?
20 Okay.

21 VENIREPERSON: No, really I haven't.

22 Q. (By Ms. Miller) Ms. Lawley, let me ask you this.

23 A. Okay.

24 Q. Do you think through the drugs and alcohol that a
25 person -- or any other type of rehabilitation that a person

1 has to want to be rehabilitated before --

2 A. Yes.

3 Q. -- they can?

4 Would you want to know if a person had been given
5 the opportunity to rehabilitate themselves in making a
6 determination as to whether you considered like drugs,
7 alcohol, those types of things mitigating evidence?

8 A. I'm sorry. You lost me on that.

9 Q. Okay. Well, some people say drug or alcohol use or
10 abuse might be mitigating evidence such to change a death
11 sentence to one of life. I'm not saying you do, but -- and
12 you said you thought some people could be rehabilitated and
13 some couldn't.

14 Would you want to know whether the person had been
15 given the opportunity to rehabilitate themselves and whether
16 they had tried or whether they had just basically thumbed
17 their nose at it?

18 A. In this particular case?

19 Q. Well, just in a case?

20 A. It might be of some consequence.

21 Q. Do you think that it's a disease, or do you think
22 that it's a conscience choice? Or do you think that it's a
23 conscience choice that perhaps might become a disease?

24 A. Are we talking about drugs?

25 Q. Drugs and alcohol?

1 A. I think there are two different ones.

2 Q. Okay.

3 A. I mean, I don't compare -- I don't put drugs and
4 alcohol in the same category.

5 Q. Okay. How about drugs --

6 A. Because I think alcohol can be hereditary. Drugs, I
7 think, is choice.

8 Q. Okay. So if a person voluntarily takes drugs or
9 even voluntarily takes alcohol, do you think they should
10 still be held accountable for their actions under the
11 influence of drugs or alcohol? Say I go out and drink and
12 use cocaine and I go out and kill someone, should I still be
13 held accountable for my actions?

14 A. I think so.

15 Q. Even though I might have been intoxicated at the
16 time?

17 A. It was your choice to get that way.

18 Q. Okay. All right. Ms. Lawley, thank you very much.
19 Do you have any other questions?

20 A. No.

21 Q. Okay. Thank you.

22 THE COURT: You may begin questioning the
23 juror.

24 MS. BALIDO: Thanks, Judge.

25 Cross-Examination

1 By Ms. Balido:

2 Q. Ms. Lawley, as the Judge told you, my name is
3 Jennifer Balido. And along with Mr. Byck back here, I
4 represent Mr. Murphy, who is the man who is accused of this
5 crime.

6 A. Uh-huh.

7 Q. And what we're talking about today. Let me just
8 tell you just starting off that I have enjoyed watching you
9 answer Ms. Miller's questions because you wouldn't believe
10 how many un -- let's see -- how many -- yeah, how we have to
11 have so many like dead fish faces kind of and you can't tell
12 anything about a person, but I really do appreciate your
13 personality and the way that you are because I can kind of
14 see when things confuse you and that sort of thing and so
15 hopefully we can talk about some of those things.

16 And along those lines, you kind of had a quizzical
17 look on your face when Ms. Miller told that you if you answer
18 these questions in such a way that the death penalty is the
19 ultimate result, that there is nothing that the Judge can do
20 but give him the death penalty.

21 Did that surprise you?

22 A. No.

23 Q. Okay.

24 A. I thought he -- the Judge, I thought, explained that
25 earlier.

1 Q. Okay.

2 A. That that was --

3 Q. You just kind of looked quizzical. And what the
4 situation is, is that the jury needs to know and it's
5 important to know that the decision on the facts that the 12
6 jurors make in this case --

7 A. Uh-huh.

8 Q. -- whether or not he's guilty or not guilty, whether
9 or not he's a future danger or not, and whether or not
10 there's mitigating circumstances or not, there's nobody else
11 basically that change that decision. The decision on the
12 facts is solely on the jurors. And I know that you mentioned
13 in your questionnaire that you thought that -- you kind of
14 had a bad feeling about the appellate process and the number
15 of appeals and how long it takes.

16 A. That's right.

17 Q. Can you kind of tell me what you base that on? As
18 an appellate lawyer, I'm kind of interested.

19 A. Well, I may not know the correct nomenclature for
20 all of this. I just think to keep someone on death row for
21 ten years is wrong. I mean --

22 Q. Okay.

23 A. If you're going to -- I mean, I think that the
24 appeals should take less time than that.

25 Q. Okay.

1 A. I think it's wrong for the criminal. I think it's
2 wrong for the families. I think it's wrong for the families
3 of the victims.

4 Q. Okay.

5 A. If it were murder or whatever.

6 Q. And I agree with you there, because I think that
7 sometimes people say that one of the -- one of the goals of
8 the death penalty is to be a deterrent for other people. And
9 I think that when people see how long it takes, it kind of
10 loses some of its deterrent effect.

11 Do you agree with me on that?

12 A. I do agree with you.

13 Q. Okay. Would you agree that although they take a
14 long time, that when we're talking about appeals of cases
15 where the death penalty is the ultimate -- is the ultimate
16 punishment, that the State of Texas should dot every I and
17 cross every T before they take someone's life?

18 A. Yes.

19 Q. Okay. And that kind of gets back around to the
20 State in its burden of proof. The State has got to prove its
21 case beyond a reasonable doubt, that Mr. Murphy is guilty of
22 capital murder before we even get to these special issues.

23 A. I understand that.

24 Q. And we used to have a definition of reasonable
25 doubt, and we don't have one anymore. The Court took it away

1 from us for reasons only known to themselves. And so now
2 basically reasonable doubt is kind of like in the eye of the
3 beholder. Everybody's definition is different. It's just
4 whatever you think reasonable doubt is and what proof beyond
5 a reasonable doubt is. I can tell you what reasonable doubt
6 is not though.

7 When we're talking about fighting about money, suing
8 people or car wrecks or that kind of thing, the person that's
9 trying to get money from another person has to prove their
10 case by a preponderance of the evidence. Some people say 51
11 percent, kind of like we're talking about probability. When
12 the State of Texas through its Child Welfare Division is
13 trying to take your children away from you, they've got to
14 prove it more than a preponderance of the evidence. They've
15 got to prove it by clear and convincing evidence. And when
16 the State of Texas is trying to take away your liberty or
17 your life as in this case, they've got to prove their case
18 beyond a reasonable doubt, which is something more than a
19 preponderance, something more than clear and convincing.

20 A. Uh-huh.

21 Q. And you told the State and you told the Judge and I
22 guess I just need one more reassurance. Can you told the
23 State to its burden of proof?

24 A. I can.

25 Q. Okay. And really it's a hard question and it's a

1 question that sticks in the craw of somebody's throat and
2 it's one of those questions that my mom says that's why
3 people hate lawyers, but the question that you're going to
4 answer at the end of this trial, if you are a juror, and
5 you're very close to being a juror on this case is --

6 THE COURT: Just what you wanted to hear,
7 wasn't it?

8 VENIREPERSON: Yeah, can I answer -- which way
9 can I get out of this?

10 MS. BALIDO: Exactly.

11 THE COURT: You've crossed that bridge.
12 You've had plenty of opportunity before now. You didn't bail
13 out so you're going to stay in the boat with us.

14 Q. (By Ms. Balido) It's not didn't Mr. Murphy do it.
15 The question is not that.

16 A. Okay.

17 Q. The question is whether or not the State can prove
18 it beyond a reasonable doubt. And like I said, that's one of
19 those questions that my mother tells me that's why people
20 hate lawyers. Because it's -- it's a question that people --
21 you know, they think, well, he did it, you know, which can
22 crystallize what Ms. Miller was saying that, you know, if
23 they don't prove Dallas County, State of Texas, it's going to
24 be hard but the Judge is going to instruct you to find him
25 not guilty.

1 Can you do that?

2 A. Yes.

3 Q. Okay. And if the only evidence that is -- that ties
4 this person to the crime is a confession that was illegally
5 gained, okay, and you've got to toss that out, then you've
6 got to find him not guilty as well.

7 You understand that?

8 A. (No response.)

9 MS. BALIDO: Did she give --

10 THE COURT: No.

11 MS. BALIDO: I'm sorry. Did she not do it?

12 Q. (By Ms. Balido) I'm sorry. We do so many of these
13 I couldn't remember if she gave it or not.

14 THE COURT: She did not.

15 Q. (By Ms. Balido) Okay. Let me give you an example.
16 Let's say -- I won't use myself so you won't hate me. I'll
17 use Mr. Byck as an example.

18 A. Okay.

19 Q. Let's say Mr. Byck loves to burn down schoolhouses.
20 That's just his deal and he's real good at it and he makes a
21 special potion up of certain chemicals that only he knows and
22 he goes out to a schoolhouse and he burns it down. And let's
23 say a hundred kids are killed. Somehow or another the police
24 bump into him and they -- you know, around the neighborhood
25 or whatever and they say why don't you come down and talk

1 with us and he says okay. He goes down there. He's in
2 custody and he starts talking to the police and he starts
3 telling them how he burn down this schoolhouse and how he
4 made this special potion of things. The -- if you watch any
5 of these crime shows, you've heard of the Miranda warnings.
6 The police officer gives all of them but one. Okay? And
7 that one might be that you -- or that -- one of them is that
8 you can end the interview at any time, end the questioning at
9 any time. And he just forgets to give that one to them.
10 They take the confession. Mr. Byck never says I want to stop
11 the interview at any time. And so therefore, you know, they
12 arrest him, they put him in jail, they bring him for trial,
13 and you're sitting as a juror on this case. The only
14 evidence that is present in the case is this confession that
15 he did it, he did it in a certain way, he did it in Dallas
16 County, he did it on a certain -- at a certain time, he did
17 it, and he liked doing it. And then the officer gets up and
18 this is one of the honest officers and he gets up and he
19 says, okay, I gave him all his Miranda warnings but one and I
20 just made a mistake. It was just, you know, one of those
21 days and I just made a mistake and I didn't give them all to
22 him. So you get the jury charge in this case. And the jury
23 charge from the Judge tells you that unless you believe all
24 four of the warnings, every single warning required under the
25 law was given to him, then you must throw out that confession

1 and not consider it for any purpose. So you're basically
2 sitting there in a situation that if you follow the law,
3 you've got to throw out that confession and find Mr. Byck who
4 loves to -- you know, loves to burn down schoolhouses not
5 guilty. Or you can do -- you can basically follow the text
6 of the confession and know -- you know that he's guilty. You
7 know that he did it. You know that he likes it. You know
8 he's going to do it again. And find him guilty and go on.

9 Can you see that that's kind of a moral dilemma?

10 A. Yeah, and that's what's wrong with the law, but you
11 have to go by what the law says.

12 Q. Okay.

13 A. So if you have to throw it out, you have to throw it
14 out. No, I wouldn't like it.

15 Q. You wouldn't like it?

16 A. I wouldn't like it, but that's what it says to do.

17 Q. Right.

18 A. You have to do.

19 Q. Right. And I've had --

20 THE COURT: You're still in the boat.

21 VENIREPERSON: Isn't that terrible? I wish I
22 could lie about that.

23 Q. (By Ms. Balido) And that's one of those things that
24 I've had juries both as a -- when I was a prosecutor and as a
25 defense lawyer. I've had juries that said, you know, I

1 didn't like it. I thought that guy was dangerous. I thought
2 that he committed the crime, but the State just didn't prove
3 it beyond a reasonable doubt for whatever reason. And, you
4 know, that's a situation -- and they find that person not
5 guilty. And it's hard to do, but you're telling me that you
6 can do that if that's what the law --

7 A. If I have to do it, yeah. I mean, if that's --

8 Q. All right. Let me also talk to you a little bit
9 about -- about what is required -- what they have to prove in
10 this case. There are all sorts of ways to kill people, okay,
11 under the law and all sorts of types of homicide, I guess I
12 can call it that way. There are homicides that are committed
13 with criminal negligence where someone should have known
14 better or made a mistake. There are homicides that are
15 committed by accident. There are homicides that were
16 committed recklessly. And there are homicides that were
17 committed knowingly, where you knew that it was dangerous
18 whatever you were doing and you still did it, so you should
19 be held accountable. All those types of homicides are --
20 require lesser mental states than what we're talking about
21 here. What we're talking about here -- and it says it in the
22 indictment in front of you -- intentionally causing the death
23 of somebody. And what that means is specifically causing the
24 event and intending the result. Okay? So if I, again,
25 picking on Mr. Byck if he's still there -- picking on Mr.

1 Byck, if I decide that I've just had it with him and I go and
2 I buy a gun and I buy bullets and I sneak it into the
3 courthouse and I sit here and he's just finally driven me to
4 the brink of insanity but not quite legally insane and I pull
5 out my gun and I shoot him dead right here, I intended to
6 cause the result.

7 Now, if I pull out my gun and I threaten him with
8 it, that's not the specific intent to kill. If I shoot him
9 in the foot to injure him, my specific intent is to injure
10 him, not to kill him. But until and unless the State proves
11 to you beyond a reasonable doubt that Mr. Murphy had the
12 specific intent to kill, if they can do that, then they
13 haven't proven their case beyond a reasonable doubt.

14 And can you agree with that? Can you hold them to
15 that burden?

16 A. That's right.

17 Q. Okay. Let me just ask you some basic questions and
18 then we'll kind of move on to the special issues again. As
19 you can tell by the indictment that's sitting in front of
20 you, all murders are bad and I can kind of see you wince
21 every time Ms. Miller called something a simple murder or a
22 regular murder because there are no simple or regular
23 murders, because it's hard to classify these as either
24 capital murders or murders without using those terms. But
25 you can see by the indictment that Mr. Murphy is indicted

1 with the crime of capital murder by causing the death of
2 Bertie Cunningham, by either shooting her with a gun or
3 drowning her in water during the course of a robbery or a
4 kidnapping. So just on that indictment, when we're talking
5 about shooting in the head and drowning in water, I think
6 that you can probably assume that the pictures in this case
7 may be of a graphic nature. And let me just tell you,
8 pictures of any murder are graphic.

9 What I need to know from you is if you think that
10 you can judge pictures like that for their evidentiary value
11 and not be swayed simply on emotion or sympathy? I mean, I
12 think everyone is going to have a reaction, but can you
13 judge -- you know will it sway your opinion one way or
14 another is what I'm saying? Just simply the --

15 A. Can I tell a lie and say yes?

16 Q. No.

17 A. No, I'm sorry, it won't.

18 Q. Okay. And let me also ask you if the evidence in
19 this case was to show you that the victim in this case was an
20 80-year-old woman, would that cause you not to be fair and
21 impartial in this case?

22 A. No.

23 Q. Okay. Let me go on and just talk to you a little
24 bit about Special Issue Number 1 and Special Issue Number 2.
25 And talk to you a little bit about probability again.

1 Would you -- can you give me some words that you
2 would -- or a phrase that you would use instead of the word
3 "probability" in Special Issue Number 1?

4 A. Possibility is one word that comes to mind.

5 Q. Okay.

6 A. More chances than not. What else do I say?

7 MS. BALIDO: Just one second.

8 THE COURT: You're still in the boat.

9 Q. (By Ms. Balido) Okay. And when you were taking to
10 Ms. Miller about Special Issue Number 1, you told her that
11 even after finding someone guilty of capital murder -- and
12 what we're taking about is the intentional murder of somebody
13 in the course of a kidnapping or a robbery by shooting her in
14 the head or drowning her in water, that even after hearing
15 that kind of case and finding somebody guilty in that kind of
16 case, that you would not automatically answer Special Issue
17 Number 1 yes in that situation and find that he's a
18 continuing threat automatically? Is that what you said?

19 A. That's what I said.

20 Q. Okay. And let me kind of go over with special --
21 just one thing in Special Issue Number 2 that I wanted to
22 talk with you about. You said when you were talking with Ms.
23 Miller about rehabilitation and you talked about that you
24 thought that the use of drugs and alcohol was a different
25 situation just because you felt like alcohol was hereditary?

1 A. Can be hereditary.

2 Q. So the rehabilitation issues are different in that
3 situation. And also, then you said that it was different
4 also with criminal behavior. And you mentioned pedophiles
5 and so I really don't want to talk about pedophiles. I never
6 want to talk about pedophiles. But let's not talk about it
7 right now.

8 THE COURT: Mr. Cryer?

9 MS. BALIDO: Sir, I don't want to talk about
10 that.

11 Q. (By Ms. Balido) I've got a case he's messing with
12 me about. I want to talk about actual -- do you think that
13 criminals, outside of pedophiles or sex offenders, criminals
14 or people that commit criminal acts can be rehabilitated?

15 A. See, you keep putting everything into one big lump
16 sum. I mean, lump, and --

17 Q. Well, let me ask you this, then. Do you think
18 someone who has committed murder, intentional murder in the
19 past, can be rehabilitated?

20 A. Intentional murder? I think there are different
21 reasons for committing murder.

22 Q. Okay.

23 A. So it depends on what went before that.

24 Q. Okay. I have just one last question, and when
25 we're -- when we're talking about accountability in this

1 case, if the State proves beyond a reasonable doubt that Mr.
2 Murphy is guilty of capital murder, he will be held
3 accountable for his actions and he'll be held accountable in
4 one of two ways, either life confinement in the penitentiary
5 or the death penalty. And it used to be that people didn't
6 know what life confinement in the penitentiary meant.
7 Sometimes it was 5 years, sometimes it was 20 years,
8 sometimes it was 30 years. But the legislature, thank
9 goodness, has allowed us now to tell you that life
10 confinement in the penitentiary is 40 calendar years without
11 the possibility of parole.

12 A. Okay.

13 Q. And that's not even saying after 40 years the doors
14 are going to swing wide. They still have to go through the
15 parole process.

16 A. Uh-huh.

17 Q. Do you think that when we're talking about a capital
18 murder case, that both the death penalty and a 40-year
19 confinement is -- they are both appropriate punishment
20 alternatives?

21 THE COURT: Depending upon the circumstances.

22 Q. (By Ms. Balido) Yeah, depending on the case?

23 A. Yes.

24 Q. So you could not say -- I mean, you could -- if you
25 felt like it was a life case, you could give somebody life.

1 If you felt like it was a death case, you could give somebody
2 death?

3 A. Yes.

4 Q. That's all I just wanted to talk to you about. I
5 appreciate it, Ms. Lawley, very much.

6 A.. Okay.

7 THE COURT: Ms. Madore, if you'd excuse Ms.
8 Lawley momentarily.

9 Ms. Lawley, you will be excused in the company of
10 the bailiff momentarily. The attorneys will confer with
11 their immediate co-counsel, after which they will inform me I
12 will later inform you whether you remain under
13 consideration. It will be less than five minutes, I
14 anticipate.

15 VENIREPERSON: Okay.

16 (Venireperson leaves the courtroom.)

17 (State no challenge for cause - Ms. Lawley)

18 MS. MILLER: The State has no challenge.

19 (Defense no challenge for cause - Ms. Lawley)

20 MS. BALIDO: The defense has no challenge for
21 cause.

22 MR. BYCK: As long as the juror is not allowed
23 to speak or get anymore candies or anything else from our
24 court reporter.

25 THE COURT: We need Ms. Lawley, please.

1 (Venireperson returned to courtroom.)

2 (Jo Lawley Prospective Juror No. 25)

3 THE COURT: Ms. Lawley, you remain under
4 consideration by the Court as a prospective juror in this
5 case.

6 With your permission, I'm going to ask that you
7 allow Ms. Madore to take a Polaroid picture of you for the
8 limited purpose of assisting the attorneys in identifying
9 faces with jurors when they exercise their peremptory
10 challenges in a couple of weeks.

11 Also, I've asked Ms. Daily, the Court Administrator,
12 to come in. She going to confirm some -- your home phone
13 number. If for whatever reason your phone number changes,
14 I'm not anticipating, but there's no reason to believe that
15 it might not, depending on whatever the circumstances may
16 be. If it should change, if you'd please let her know.
17 We'll keep you apprised in the future and keep track of you.

18 Also, avoid the temptation of contacting the Dallas
19 Morning News with regard to back issues that treated the
20 incident as a news story which forms the basis of the
21 prosecution.

22 Questions for me? Do you have any questions for me?

23 VENIREPERSON: No. Didn't you read that last
24 one when it said, no, I didn't want to serve on this trial?

25 THE COURT: If it said, yeah, I want on it,

1 that would have got a get out of jury card.

2 MR. DAVIS: With the Court's permission, we
3 have reached an agreement on Ms. Neff.

4 THE COURT: She is acceptable to both sides
5 without question?

6 MS. BALIDO: That's not the agreement.

7 MR. BYCK: No, Your Honor, we're not stapling
8 our law license to that one either. We'd ask Ms. Neff be
9 excused.

10 THE COURT: Because of her antitrust jury
11 obligations?

12 MR. BYCK: Yes.

13 MR. DAVIS: Exactly.

14 (Recess of proceedings.)
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Reporter's Certificate

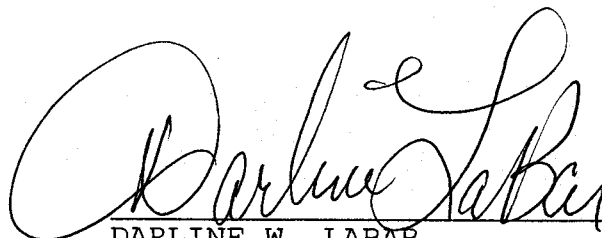
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 18th day of April, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

VOLUME 30 of 65 VOLUMES

74145

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

FILED IN
COURT OF CRIMINAL APPEALS

INDIVIDUAL VOIR DIRE

DEC 5 2001

Troy C. Bennett, Jr., Clerk

A P P E A R A N C E S:

HONORABLE BILL HILL, Criminal District Attorney
Crowley Criminal Courts Building
Dallas, Dallas County, Texas 75207
Phone: 214-653-3600

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550
MS. MARY MILLER, A.D.A., SBOT # 21453200
MR. TOBY SHOOK, A.D.A., SBOT #
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 30th day of April, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:
Proceedings reported by machine shorthand, computer
assisted transcription.

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P R O C E E D I N G S

THE COURT: This is a continuation of
F00-02424-NM, styled the State of Texas versus Jedidiah Isaac
Murphy.

Is the State prepared for the panel to return to the
courtroom?

MR. DAVIS: The State's ready, Your Honor.

THE COURT: Is the defense ready, Ms. Little?

MS. LITTLE: Yes, Your Honor.

THE COURT: Let the record reflect Mr.
Jedidiah Isaac Murphy, the defendant, is present in court and
will be at all times during the Court's presentation unless I
dictate the contrary into the record.

Sheriff, may we have the jury panel, please.

(Venirepersons brought into courtroom.)

THE COURT: Counsel may be seated if you wish.

Good morning, ladies and gentlemen. I'm Judge
Harold Entz. I am pleased on behalf of the attorneys whom
I'll be introducing momentarily -- take this opportunity in
welcoming each of you to this the 194th District Court. This
is one of 15 courts in this building given constitutional
responsibility of presiding over criminal cases classified as
felonies. There are 13 county criminal courts in this
building. Constitutionally they are created to handle what
we call misdemeanor cases.

1 A misdemeanor, by contradistinction from a felony,
2 is any criminal offense the punishment for which is either
3 jail time and/or a fine. On the other hand, the 15 district
4 courts, this being one of them handling felony cases, handle
5 cases that are classified as felonies. And by felony, I mean
6 any criminal offense the punishment for which includes time
7 in the penitentiary.

8 Before I introduce the attorneys and the defendant
9 and go into the matters at hand with some preliminary jury
10 instructions, may I ask all of you again to please rise,
11 raise your right hands, and be prepared to take an oath.
12 And, ladies and gentlemen, for purposes of your individual
13 religious belief or matters of personal conscience at your
14 option, your option, the operative verb will be either
15 "swear" or "affirm."

16 Do each of you solemnly swear or affirm that you
17 will make true answers to such questions as may be propounded
18 to you by the Court or under in directions touching your
19 service and qualifications as a juror, so help you God.

20 (Venirepersons sworn.)

21 THE COURT: Thank you. Please lower your
22 hands and again be seated.

23 Ladies and gentlemen, allow me, if I may, at the
24 commencement of the proceedings this morning to introduce
25 those whom you see seated at the counsel table. We'll begin

1 with the counsel table to the right as you look at them.
2 Begin first with the lead prosecutor in this particular
3 prosecution, a Senior Prosecutor in the Dallas District
4 Attorneys Office, the Honorable Greg Davis.

5 Mr. Davis.

6 MR. DAVIS: Good morning.

7 THE COURT: Seated next to Mr. Davis is
8 co-counsel on behalf of the State with regard to this
9 prosecution. At the present time this lady occupies the role
10 of Chief Prosecutor assigned to this the 194th District Court
11 by Dallas District Attorney Bill Hill. I present now the
12 Honorable Mary Miller.

13 Ms. Miller.

14 MS. MILLER: Good morning, ladies and
15 gentlemen.

16 THE COURT: Moving on to the next table, I
17 will introduce first the three attorneys representing the
18 defendant. And last I will introduce the defendant to you.

19 Begin with lead counsel for the defense, a former
20 Chief Prosecutor in the Dallas District Attorneys Office, so
21 designated by the State Bar of Texas by virtue of experience,
22 training, and having passed a very difficult examination, a
23 board certified criminal law specialist, lead counsel for the
24 defense, the Honorable Jane Little.

25 Ms. Little.

1 MS. LITTLE: Good morning, ladies and
2 gentlemen.

3 THE COURT: Seated next to Ms. Little is a
4 fellow defense attorney, also a board certified criminal law
5 specialist, the Honorable Michael Byck.

6 Mr. Byck.

7 MR. BYCK: Good morning.

8 THE COURT: Seated behind Mr. Byck is the
9 third attorney representing the defendant, the Honorable
10 Jennifer Balido.

11 Ms. Balido.

12 MS. BALIDO: Good morning.

13 THE COURT: Seated next to Mr. Byck, opposite
14 Ms. Little, is the accused, the defendant, if you will,
15 having previously come to my attention, by the name of
16 Jedidiah Isaac Murphy.

17 THE DEFENDANT: Good morning.

18 THE COURT: Mr. Murphy, if you'd be kind
19 enough to make yourself --

20 Ladies and gentlemen, get right to the point of the
21 matter at hand. You have been summoned as a prospective
22 panel on our continuing effort to impanel a jury in a case
23 styled the State of Texas versus Jedidiah Isaac Murphy. Mr.
24 Murphy has been indicted by a Dallas County grand jury for
25 capital murder. The State has made known its intent of

1 seeking the death penalty. I by law am required pursuant to
2 the Code of Criminal Procedure this morning to explain to you
3 certain principles of criminal law that are applicable in all
4 cases, including but not limited to a capital murder case, at
5 the conclusion of which by virtue of the clipboards that you
6 were asked to bring in we will hand out questionnaires.

7 After you've completed the questionnaires, we will take a
8 short break. You will then be asked to return, and at that
9 time I will call out the names of when those of you that will
10 need to return for purposes of individual questioning.

11 Ladies and gentlemen, the Texas Code of Criminal
12 Procedure is very, very clear that in a capital murder case
13 in which the State is seeking the death penalty, upon request
14 either by the prosecution or the defense, prospective jurors
15 may be individually questioned.

16 We have been at this process now for a little over a
17 month with regard to individual questioning. We are working
18 up to a panel of 48 constitutionally qualified jurors, at the
19 conclusion of which the attorneys will be allowed obviously
20 under law or given the opportunity to exercise their
21 peremptory challenges. And the 12 that remain from the pool
22 of those that have been constitutionally qualified will serve
23 as jurors in this particular case.

24 Comment or two at the outset about capital murder
25 statutorily in the State of Texas. Ladies and gentlemen, in

1 1972 in a case called or styled as we in the law business
2 say, Furman versus Georgia, the United States Supreme Court
3 ruled that all state capital murder schemes then in place
4 were unconstitutional for a couple of reasons. Realize we
5 have I think only one lawyer on the panel. I think Mr. Hill
6 is the only lawyer. There may be others that I failed to
7 ascertain when I was in a very cursory manner glancing over
8 the questionnaire or the information that you gave. But
9 basically in 1972, without giving you a constitutional
10 lecture, the United States Supreme Court said that the
11 schemes in place and they utilized Georgia, but as it turned
12 out it meant every other state that had the death penalty,
13 was unconstitutional the way it was so statutorily
14 constructed because it was a violation of the 8th Amendment,
15 cruel and unusual punishment; violation of the 14th
16 Amendment, due process. Essentially the United States
17 Supreme Court back then said that the schemes under place in
18 the United States at that time gave the prosecution unbridled
19 discretion, that there needed to be some sort of a guided
20 discretion that would narrow the possible pool of cases of a
21 murder variety for which the death penalty could even be
22 constitutionally considered.

23 Well, a number of states after reading Furman versus
24 Georgia, the next time their legislatures met, took this
25 opinion in hand and tried to craft a scheme by which the

1 scheme could pass United States Constitutional approval.

2 1976, there were a trilogy of cases, including a
3 case called Jurek versus Texas, in which the United States
4 Supreme Court approved of the scheme that is utilized in
5 Texas.

6 Now, let me explain to you how the scheme works in
7 Texas. At the outset let me tell you that murder standing
8 alone in and of itself cannot any one of the 254 counties in
9 the State of Texas be eligible for the death penalty. In
10 Texas and every other State for there to be a
11 constitutionally accepted death penalty murder statute, there
12 must be murder plus one or more aggravating factors.

13 Well, a number of states put the aggravating factors
14 into the penalty stage of the trial. Florida and Georgia
15 being the two most notable that utilize those kind of
16 schemes. Those two states basically a jury hears a murder
17 case, if they find the defendant guilty, if the State has
18 given the defense 90 days notice that they will seek to
19 convince a jury that aggravating factors outweigh the
20 mitigating factors, it's a recommendation to the trial judge
21 in those two states and virtually every other state that has
22 the death penalty other than Texas and Oregon. It's a
23 recommendation to the trial Judge from the jury, as opposed
24 to the scheme that we now have. Florida and Georgia if the
25 recommendation for the jury is life, it's life. If the

1 recommendation is death, it's death. But in those states the
2 Judge can overturn the jury's verdict either way. Either
3 way. So it's just a recommendation. It's not a requirement
4 as it is in Texas.

5 Now, let me explain to you how we do it in Texas.
6 And this is I say we, it's not just the 194th District Court,
7 not just Dallas County, it's the whole State. Here is the
8 way a death penalty case works. Number one, to pass
9 constitutional muster even to be eligible for a death
10 penalty, it's got to be murder plus, murder and something
11 else. Well, what is that something else? Well, it could be
12 murder during the commission of a number of other enumerated
13 felony offenses. Murder during the course of a robbery, a
14 burglary, a kidnapping, an arson, or a sexual assault, which
15 we used to call rape. That's the murder plus. Or status is
16 also a protected area with regard to death penalties. If a
17 murder is committed and the victim is a fireman, or woman, or
18 a police officer in the lawful discharge of their duties, or
19 a penal guard during an escape, those classification of
20 persons or occupations are protected and that can be a death
21 penalty case.

22 Likewise, age is a protected status. If the victim
23 is a child under the age of 6, that can be a death penalty
24 eligible type constitutionally approved case. Also, mass
25 murders like Timothy McVeigh. Well, it doesn't have to be

1 168 as he did, two or more. Serial murders. Can be like the
2 Ted Bundys and the Jeffrey Dahmers. Those kinds of actions
3 can be a capital murder case. Murder for hire may be one.
4 Murder for remuneration. You kill somebody in an effort to
5 get insurance money, matters such as that. So, number one,
6 it's always murder, has to be murder, but it always has to be
7 something plus.

8 In this case that we have before us, about which
9 we're going to be talking more this morning, and most of you
10 will be brought back and we will go into it with finite
11 detail. The allegation in the indictment is murder during
12 the course of either a robbery and/or a kidnapping. Now,
13 under our statutory procedure, if the jury impaneled to hear
14 the case hears the case and decides it's a murder, but there
15 is not this plus, there's not a kidnapping or a robbery, the
16 jury would not find the defendant not guilty, but would find
17 that the defendant in this case under my hypothetical
18 scenario guilty of murder but not capital murder.

19 Murder, not capital murder, in the State of Texas is
20 what the legislature has designated a first degree felony
21 which means that the penalty range for murder, not capital
22 murder, but murder is not less than 5, nor more than 99 years
23 or life in the penitentiary, with an optional fine not to
24 exceed \$10,000.

25 Ladies and gentlemen, for those of you thinking, my

1 goodness, 5 years for a murder, I've been at this for nearly
2 28 years now, let me tell you there are all types of
3 relationships between individuals and circumstances that
4 could -- and I have seen juries a number of times do it, find
5 a defendant guilty and give the minimum punishment, just as
6 I've seen a number of them horrendous and have been 99 years
7 or life. So trust me when I tell you the legislature was
8 very, very wise -- I could be nasty and say for a change, but
9 I won't, but they say it's 5 to 99 years or life, that takes
10 into every possible scenario you can imagine.

11 Now, under my hypothetical let's assume a jury finds
12 a defendant in Texas guilty at the first stage of the trial
13 of capital murder. Murder plus. That does not -- and let me
14 emphasize to the best I possibly can articulate or make you
15 aware, when a jury finds a defendant guilty of capital
16 murder, does not automatically mean a death sentence. Far
17 from it. Far from it.

18 The two options however a jury has in a capital
19 murder case, the matter of punishment is either life or
20 death. The latter I would submit to you speaks for itself.
21 In Texas it's death by lethal injection. On the other hand,
22 a life sentence for capital murder in the State of Texas by
23 law means the individual must serve 40 calendar years in
24 custody before being eligible for release on parole.

25 Now, that 40 calendar years, ladies and gentlemen,

1 that's day-for-day, week-for-week, month-for-month,
2 year-for-year, regardless of the rehabilitation efforts the
3 defendant has made while in custody or good conduct. We're
4 looking at a flat 40 calendar years before being eligible for
5 consideration on supervision called parole. Does not mean
6 that if the defendant survives 40 years in the penitentiary,
7 that doors just automatically fling open and out the
8 defendant goes. Eligibility process though commences after
9 the 40 years.

10 Now, in those capital cases in which the State is
11 seeking death, the same jury that heard the guilt/innocence
12 stage of the trial reconvenes to hear additional evidence
13 that either side cares to present to determine whether or not
14 the sentence should remain at life or should become death. A
15 defendant in any capital murder prosecution going into the
16 penalty stage of the trial has a life sentence to begin with,
17 and it only -- only becomes a death sentence upon certain
18 matters being brought to the attention of the jury, which
19 they believe and answer accordingly. Only then does it
20 become a death sentence. So I want to emphasize a capital
21 murder guilty verdict does not equal death. Life, and maybe
22 death, depending upon certain circumstances.

23 Now, here are the circumstances. We have them for
24 your benefit blown up. They're called special issues.
25 Stealing from civil courts that term, civil cases in Texas,

1 jurors are asked to answer certain questions which are called
2 special issues. We call them special issues for purposes of
3 capital murder on the criminal side of the docket.

4 Not that you can't read, because that's the
5 constitutional requirement even to get up here, but for some
6 of you may be a little bit ways away and your eyesight may
7 not be real good, let me read the special issues for you.

8 Special Issue Number 1 reads as follows: Quoting,
9 whether there is a probability that the defendant would
10 commit criminal acts of violence that would constitute a
11 continuing threat to society, close quote.

12 Special Issue Number 2 reads, quote: Whether,
13 taking into consideration all the evidence, including the
14 circumstances of the offense, the defendant's character and
15 background, and the personal moral culpability of the
16 defendant, there is a sufficient mitigating circumstance or
17 circumstances to warrant that a sentence of life imprisonment
18 rather than a death sentence be imposed, close quote.

19 Now, the jury only gets to these special issues if
20 they have found a defendant guilty of capital murder. If
21 obviously it's a not guilty verdict, the trial is all over,
22 we go about our business. We go to the next case on the
23 trial docket of the court. If a verdict of murder, that is
24 murder without the aggravating factors have been returned,
25 then you don't have these special issues either. You just

1 have 5 to 99 years or life and take into consideration all
2 the evidence presented and you, to be a qualified juror, must
3 be willing to consider the full 5 to 99 years or life and
4 have the requisite discipline and say that you'd wait until
5 you hear the evidence, and, yeah, if I think 5 is fine, and
6 say it sounds a little bit low to me, Judge, but if you can
7 show me one, I can buy it, or 99 or life.

8 Only if the jury finds a defendant guilty of capital
9 murder are they obligated to deal with these special issues.
10 Everybody with me so far? I know a Monday morning you came
11 down here, it was a beautiful weekend and you come down and
12 say, well, it's a Monday morning, you know, I'll go in. It
13 will be some little misdemeanor case. It might be a
14 shoplifting at a grocery store something and you come in and
15 get slapped in the face verbally with a Judge talking about
16 the death penalty. Well, I apologize if I have slapped you
17 in the face verbally, but this is very serious matters and
18 that is what I'm trying to impress upon all of you.

19 Now, as I said before, going into the penalty phase
20 of a capital murder case the defendant starts out his
21 guarantee of a life sentence. It only becomes a death
22 sentence if the jurors in answer to Special Issue Number 1
23 answer yes. I would submit to you grammatically it is
24 constructed in such a way -- at the beginning of the jury's
25 deliberations the legislature has so structured Special Issue

1 Number 1 that it begins with a no. It doesn't say there is a
2 probability. It's whether there is a probability.

3 The burden of proof, the responsibility, if you
4 will, of going forth with the evidence in an effort to
5 convince the jury that Special Issue Number 1 should be
6 answered yes, as opposed to no, lies with the prosecution,
7 Mr. Davis, Ms. Miller. If they are unable to convince all 12
8 jurors that the answer to Special Issue Number 1 should be
9 changed from no to yes, the jury comes back into the
10 courtroom with that decision, make it known to the Court, and
11 it's a life sentence. Doesn't get off scot-free. That's 40
12 years. 40 years.

13 Only if the jury during their deliberations in the
14 penalty phase of the trial changes Special Issue Number 1
15 from no to yes must the jury go on to Special Issue Number 2.

16 Now, let me talk a minute or two about Special Issue
17 Number 2. Special Issue Number 2 has by law school
18 professors and other legal scholars, judges, prosecutors, and
19 defense attorneys been variously called the mercy question,
20 the safety net, the safety valve, matters such as that.
21 Ladies and gentlemen, let me tell you where you are
22 hypothetically if you are a juror and you get to Special
23 Issue Number 2.

24 You have found, number one, in the guilt/innocence
25 stage by virtue of finding a defendant guilty of capital

1 murder, found the defendant guilty of capital murder, that's
2 number one.

3 Number two, if you answer Special Issue Number 1 in
4 the affirmative, that the defendant is a continuing threat to
5 society, you are two-thirds of the way to a death sentence.
6 I would submit to you the legislature in enacting Special
7 Issue Number 2 has given all of us in Texas in a matter as
8 serious as death penalty, because of the absolute
9 irrevocability of a death sentence, an opportunity in Special
10 Issue Number 2 to sit back, pause, reflect, and indeed those
11 of you are of such of a mind to pray and decide, look, taking
12 everything into consideration, everything into consideration,
13 have I heard of a circumstance or circumstances because of
14 which the defendant should live and not die. This gives you
15 a chance to act on that type of evidence if presented. For
16 those of you who are saying what in the world, I've already
17 found the defendant guilty of murder plus, already found he's
18 going to be a continuing threat to society, what in the world
19 could be brought to my attention in the matter of evidence
20 that would ever cause me to answer Special Issue Number 2
21 yes. I'm not going to give you a laundry list. You can
22 probably think of a number better than I, but I'm going to
23 give you some examples of what some individuals have said
24 that they would consider.

25 Mental retardation; mental health; abuse as a child,

1 be it emotional, sexual, physical, could rise to the level
2 because of which. Or the circumstances may be such, Eagle
3 Scout, alter boy, attended Sunday school and church
4 faithfully, and this is just a fluke, an aberration of his
5 conduct because of which I'm going to answer Special Issue
6 Number 2 yes. Because, ladies and gentlemen, let me be very
7 candid with each of you to tell you that under Texas law if a
8 defendant has been found guilty of capital murder, and if a
9 jury after hearing the evidence decides that Special Issue
10 Number 1 should be answered yes and Special Issue Number 2
11 should be answered no, unlike Florida and Georgia, the jury
12 does not make a recommendation to me. I am not a thirteenth
13 juror. Yes to Special Issue 1, no to Special Issue Number 2,
14 by law I am required to sentence the defendant to death.
15 That's the way it works in Texas, and it has for a number of
16 years.

17 So, number one, to emphasize, capital murder is
18 murder plus, can't just be a murder. Cannot be such that if
19 I happen to get angry with the court reporter because she
20 needs to put a little more WD-40 on those keys that she's
21 taking down my comments, say, Ms. King, I've just had enough,
22 I told you the last two weeks that you're going to have to
23 get that fixed, I've had it with you, reach in and pull out a
24 gun which I do not have, go bang, bang, bang, bang, bang,
25 kill her. Horrendous murder in front of all of you. Not

1 capital. Most I could get is life. It's got to be murder
2 plus.

3 If I then go over and rob her of her jewelry or
4 Stenograph machine or something like that, yeah, then it
5 could be the plus. Number one, murder plus. And then it
6 only becomes a death sentence depending upon special issues.

7 So that -- those are the hurdles that the jury is
8 obligated to jump, if you will, before a death sentence can
9 be imposed. Not every capital murder case obviously is a
10 death sentence. For those of you that have lived in the
11 North Central Texas area for a few years, perhaps recall a
12 tragic incident a couple of years ago, the two military
13 cadets who were found guilty in Tarrant County of kidnapping
14 and murdering a young lady. Found out about it after one of
15 them had gone to the Air Force Academy. The other had gone
16 to the Naval Academy, as I recall. Came back, were tried for
17 capital murder, did not seek the death penalty. They got 40
18 years. Why was death not sought? Tarrant County District
19 Attorney personally told me there was no way that he felt and
20 his prosecutors felt that they could prove Special Issue
21 Number 1. This was an aberration. This was a
22 boyfriend/girlfriend type thing and the girlfriend egged the
23 boyfriend into, well, if you really love me, you'll get rid
24 of the rival and unfortunately they did it. Couldn't prove a
25 future dangerousness, but they got 40 years. They were found

1 guilty of murder during a kidnapping.

2 This case, the State has made known its intent to
3 seek death. All depends upon a jury whether or not a death
4 sentence is the result.

5 Before we get to the questionnaires, a reminder of a
6 number of statutory safeguards that every defendant,
7 regardless of the offense, enjoys.

8 The presumption of innocence. As Mr. Murphy sits
9 before you today, though he's been indicted by a grand jury,
10 the indictment is no evidence of guilt. The indictment puts
11 a defendant on legal notice of the charges against him,
12 thereby giving him through his attorneys an opportunity to
13 prepare a defense. Likewise, it notifies the State of those
14 allegations, those operative terms that they must prove
15 before a jury by law is entitled to return a verdict of
16 guilty. Same indictment makes the jury aware of the specific
17 allegations. And if they find that one or more of the
18 allegations in the indictment have not been proven to their
19 satisfaction beyond a reasonable doubt, the jury is by law
20 required to return a verdict of not guilty.

21 A couple of extreme examples to make my point. If
22 all of the evidence shows that this defendant committed the
23 murder -- and incidently this is not one of the Connally 6.
24 It's -- the defendant is alleged to have committed the murder
25 on the person of a Bertie Lee Cunningham. If you find that

1 the defendant committed the murder in the manner and means as
2 alleged in the indictment, but it occurred in downtown Fort
3 Worth, Tarrant County, Texas, though Mr. Davis, Ms. Miller,
4 would be fired before the sun goes down that day, the jury
5 must return under that circumstance a verdict of not guilty.
6 The saying in the law the allegata must comport with the
7 probata. The allegation must support the proof. Allegation
8 of the manner and means of death is shooting with a gun or
9 drowning with water. The evidence from the medical examiner
10 hypothetically shows that the victim was killed by stabbing
11 with a knife, again prosecutors have lost their job by
12 sundown, but the jury must return under that circumstance a
13 verdict of not guilty. Murphy knows that he's not on trial
14 for bank robbery. He's not on trial for possessing a kilo of
15 cocaine. He is on formal notice of the allegations in the
16 indictment, murder of a named individual, Dallas County,
17 Texas, on or about a date certain, by shooting her with a gun
18 or drowning her in water. Failure of the State to convince
19 the jury of those allegations obligates, requires the jury to
20 find the defendant not guilty. It may be a little
21 uncomfortable having to do that, but we are a society of laws
22 and not of men and women. And we must all abide by the
23 written law.

24 Presumption of innocence. The beginning of the
25 trial must by each of you be considered not guilty. The

1 burden of proof, the responsibility of proving, if they can,
2 the allegations in the indictment lies with the District
3 Attorneys Office. Jury will be called upon to return a
4 verdict of guilty or not guilty, about which I think a
5 matter -- comment or two should be stated.

6 Ladies and gentlemen, from a communication
7 standpoint, not guilty unfortunately has come to mean in our
8 jargon or our language innocence. And that's not it in a
9 legal sense. I would submit to you that in the United
10 Kingdom, England and Scotland, Wales, the verdict is perhaps
11 a bit more accurate. Judges over in the United Kingdom in a
12 criminal case ask the jury whether or not the Crown, the
13 District Attorneys Office, the prosecutors, if you will, have
14 proven the case beyond a reasonable doubt or have they failed
15 to prove the case beyond a reasonable doubt. Somehow coming
16 across the Atlantic this failure to prove the case beyond a
17 reasonable doubt became not guilty. So people say not
18 guilty. It means he didn't do it? Well, no, it doesn't mean
19 that. It means that the jury in the case of a jury trial or
20 a Judge, if a jury has been waived, which incidently cannot
21 be done in Texas in a capital murder case, not guilty means
22 that each and every one of the elements have not been proven
23 beyond a reasonable doubt.

24 Ladies and gentlemen, if there are any of you who
25 recall having heard, read, or seen anything about this case,

1 unless you can set aside that which you have read, seen, or
2 heard, you cannot be a constitutionally qualified juror.
3 United States Supreme Court case, case called M-u, capital
4 M-i-n, MuMin versus Virginia, have said that regardless of
5 what a juror has read, seen, or heard, if they can set that
6 aside and realize that it is only a journalist's
7 interpretation of what happened as opposed to evidence in a
8 courtroom, you are for purposes of media attention
9 constitutionally qualified. If on the other hand, you have
10 become so close to this matter -- and we have had some jurors
11 that we have questioned individually that were intimately
12 familiar with the circumstances of the case by virtue of a
13 number of associations that they had with some people
14 involved in this case, they cannot set that aside, have a
15 fixed opinion one way or the other, you cannot be a
16 protective qualified juror.

17 Before we get into the questionnaires, just a
18 reminder, United States there is no way I would submit a
19 legislature, United States Congress, or any State legislature
20 could pass a capital murder statute that would meet the
21 approval of the United States Supreme Court where a verdict
22 of guilty of capital murder would automatically result in a
23 death sentence. Reading the Supreme Court opinions as I do
24 and have and have taught this course to judges from
25 California to South Carolina and will be going out the latter

1 part of next month to teach a number of judges as well, I
2 submit to you there is no way a legislative body could draft
3 a statute where automatically it would be death without
4 taking into consideration matters such as the special issues
5 that we have up here to the left, especially special issue in
6 Texas Number 2, the mitigating circumstances. They must
7 always be given to the jury, I submit, constitutionally that
8 opportunity out there if there are mitigating circumstances
9 that there be a life as opposed to a death sentence.

10 One of the attorneys involved whom I will not name
11 is staunchly in favor of there being an automatic death
12 sentence for treason in the time of war. Sounds very
13 appealing, not war. But a death sentence under that rather
14 graphic set of circumstances, if a treason involved the harm
15 or death of a United States citizen. I don't think even that
16 would pass United States Supreme Court constitutional muster
17 without having a mitigating circumstance type of issue
18 factored into it. But no recent President has asked me to
19 accept a position on the United States Supreme Court. I
20 don't anticipate one will. So I leave that to the good
21 judgment of the high nine up in Washington D.C.

22 Ladies and gentlemen, the bailiffs are going to be
23 handing out to you the questionnaires. Let me, before you
24 begin answering these questions, on behalf of the attorneys
25 and they in the past have asked that I do so and I do that

1 for them and selfishly for me as well. Ladies and gentlemen,
2 there are no right or wrong answers to the questions that you
3 will be asked to answer. A number of them are very
4 subjective. A number of them are rather specific, such as
5 occupation, matters such as that, but there are a number of
6 questions that are very subjective. We do not grade
7 individuals with regard to their answers in this
8 questionnaire or as it relates to individual questioning on a
9 curve whether or not they are a good or not good citizens.
10 It's been said by a very, very prominent legal scholar that
11 second only to serving our country during a time of war in
12 the field of battle, the second highest civic obligation we
13 can impose upon a citizen is to ask him or her to serve as a
14 juror in a capital murder case. Think seriously about that.
15 We realize that this is very, very serious matters. Nobody
16 in here you can see at the counsel table has had a big smile
17 on their face. And I want to tell you, when I started this
18 business a number of years ago, I had a whole lot more hair
19 than I have right now. These are serious matters. We have
20 every reason to believe you'll be conscientious, you'll be
21 honest to the marrow of your bones with regard to answering
22 these questions.

23 As soon -- take as long as you need in answering the
24 questionnaire. No time limit, such as an examination while
25 we were students. For those of you that are teachers, well,

1 students, you have X number of minutes to answer this.
2 Answer all of the questions, please. Answer them
3 truthfully. When you have completed the questionnaire, the
4 bailiffs will be available, just hand that back to them. I
5 would guess based upon past experience, ladies and gentlemen,
6 it's going on about 11 o'clock. If all of you would
7 assemble -- that have completed, let's say assemble not later
8 than 12:15 outside the second set of double doors, based on
9 past experience, most, if not all of you, should find that to
10 be sufficient time to finish the questionnaires. After you
11 finish the questionnaires, please feel free to excuse
12 yourselves, stretch your legs. There are rest rooms. If you
13 go out to the left and left again, if you need to take a rest
14 room break or stretch your legs before you've answered the
15 questionnaires, please let the bailiff know that you're doing
16 that and just leave your clipboard and the questionnaire
17 where you find yourself and just come back in. Make yourself
18 as comfortable as you wish.

19 Those of you that wish to step outside and fill in
20 the questionnaire outside without being so cramped, you're
21 free to do that as well. Thank you very much. We'll see all
22 of you outside the second set of double doors about 12:15.

23 (Panel recessed to fill out questionnaire.)

24 THE COURT: Good afternoon, Ms. Shelton.
25 Welcome back.

1 VENIREPERSON: Hi.

2 THE COURT: Ask you to raise your right hand,
3 please.

4 (Venireperson additionally sworn.)

5 VENIREPERSON: I do.

6 THE COURT: Thank you. Lower your hand, Ms.
7 Shelton.

8 Ms. Shelton, allow me to reintroduce the individuals
9 whom we see seated at the counsel table. They've been
10 previously introduced. It's been a little while so let me
11 refresh your memory if I may.

12 Beginning with the table to the far left, lead
13 prosecutor for the State, the Honorable Greg Davis.

14 MR. DAVIS: Good afternoon.

15 THE COURT: One of the Senior Prosecutors at
16 the District Attorney office at the present time. He will be
17 joined momentarily by co-counsel, the Chief Prosecutor in
18 this court, the Honorable Mary Miller.

19 Moving on to the next table, we begin first with the
20 two of the three defense attorneys on behalf of the
21 defendant, beginning first with the Honorable Jennifer
22 Balido.

23 MS. BALIDO: How are you?

24 VENIREPERSON: Fine. How are you?

25 THE COURT: Seated next to Ms. Balido, one of

1 her co-counsels, board certified criminal law specialist, the
2 Honorable Michael Byck.

3 MR. BYCK: Good morning -- I mean, good
4 afternoon.

5 THE COURT: It's already been a long day for
6 us, trust me.

7 Continuing down the table, the defendant, the
8 accused, Jedidiah Isaac Murphy.

9 THE DEFENDANT: Good afternoon.

10 VENIREPERSON: Hi.

11 THE COURT: Lead counsel for the defense whom
12 I anticipate will be present shortly, though is not here with
13 us right now, the Honorable Jane Little.

14 Ms. Shelton, before we begin with the individual
15 questioning, there is an attorney that practices in this
16 court and the other criminal courts that has -- how should I
17 gently phrase this -- caused herself a lot of unflattering
18 publicity by virtue of some alleged behavior that she may or
19 may not have engaged in. This attorney's name has the same
20 surname as yours. And just to clear the air, do you know or
21 are you in any way related to a criminal defense attorney in
22 Dallas County, Catherine Shelton?

23 VENIREPERSON: If I am, I have no knowledge of
24 it. I've only been married for almost two years and had this
25 name, so I don't know of anybody named that in the family.

1 THE COURT: I will choose not to make any
2 further comment or it may be -- you may be lucky.

3 Ms. Shelton, we will begin with the individual
4 questioning. Statutorily, we begin with the State, the
5 Honorable Greg Davis.

6 Mr. Davis, Ms. Shelton.

7 MR. DAVIS: Thank you. May it please the
8 Court.

9 VICKI SHELTON
10 was called as a venireperson by the Court and, after having
11 been first duly sworn, was questioned as follows:

12 Voir Dire Examination

13 By Mr. Davis:

14 Q. Good afternoon again, Ms. Shelton. How are you?

15 A. Fine. How are you?

16 Q. Good.

17 Ms. Shelton, for the next 30 minutes or so I'll have
18 an opportunity to speak with you. And during that period of
19 time, we'll talk about the death penalty in a little greater
20 detail, we'll talk about some general legal principles that
21 apply in this case, and thirdly, we may talk about your
22 questionnaire a bit.

23 Let me just tell you up front, there are no right or
24 wrong answers to any of these questions. Most of the
25 questions deal with how you feel about an issue, what your

1 opinions are. As long as you tell us how you honestly feel
2 about something, that's all we can expect from you. Okay?

3 Ms. Shelton, I want to take you back to the day when
4 you came with the rest of the jurors, when you filled out
5 your questionnaire, to that time when the Judge told you that
6 you had been summoned on a capital murder case where the
7 State was seeking the death penalty against Jedidiah Isaac
8 Murphy. Can you remember what your initial reaction was to
9 that?

10 A. I think I was a little surprised because I only had
11 jury duty once before and I wasn't selected and just to know
12 it was a case that big, I was kind of surprised.

13 Q. Okay.

14 A. That's all I really felt.

15 Q. Okay. You know, sometimes jurors will tell us very
16 honestly that they're in favor of the death penalty, but
17 sometimes they also say, I don't know if I can personally
18 serve myself and perhaps be a part of a verdict that results
19 in the ultimate death of an individual. You know, as you can
20 see, Jedidiah Isaac Murphy is an individual. He's a living,
21 breathing human being. The State's position is not going to
22 change in this case. We are going to actively seek the death
23 penalty. At the punishment phase, I'll be asking you to
24 answer the special issues in such a way that Judge Entz will
25 be required by law to impose a sentence of death. I think

1 it's only fair in the State of Texas to assume that if a
2 death penalty is handed down, that it will be carried out at
3 some date in the future.

4 How do you honestly feel about participating and
5 possibly rendering a verdict that would result in the death
6 of Mr. Murphy?

7 A. Well, probably like everyone, I have mixed emotions
8 because no one wants to feel like they themselves could be
9 directly responsible for that result, but at the same time I
10 know that if I as well as everybody else on the jury were to
11 come to an agreement that that's what we felt should be done,
12 I believe that I can carry that out. I also believe that
13 we're only temporarily here and that we have a higher judge
14 and that things are going to turn out the way they're
15 supposed to turn out and that I'm not ultimately in control
16 of that, but I do believe that I could issue that as a
17 sentence.

18 Q. Okay. All right. That's fair enough. Ms. Shelton,
19 let me talk to you then in a little bit greater detail about
20 the special issues over here the Judge has mentioned to you
21 previously. As you will recall, he's told you that before
22 you reach these two special issues, you will have already
23 found the defendant guilty of capital murder. If you find
24 him not guilty, obviously that stops the trial, we all go
25 home. If you find him guilty of something less than capital

1 murder, we have a different punishment scheme. But if you
2 find him guilty of capital murder, then you'd be asked to
3 consider additional testimony at the punishment phase and to
4 answer these two special issues.

5 If you'll recall, the Judge has told you Special
6 Issue Number 1 is presumed to be answered no. The State of
7 Texas has the burden of proof on Special Issue Number 1,
8 which means that if we produce enough evidence that persuades
9 you beyond a reasonable doubt that it should be answered yes,
10 you answer yes. If we fail to do that, you answer it no.

11 First of all, do you think that you could follow
12 that law and make the State of Texas prove beyond a
13 reasonable doubt that it should be answered yes before you
14 would answer yes?

15 A. I do.

16 Q. Okay. Some people say, you know, if I find someone
17 intentionally killed another individual during the course of
18 a robbery or kidnapping, that's automatically going to answer
19 that special issue for me. I don't care what else I hear,
20 that's the type of person that I would think would be a
21 future threat regardless. That's fine. But those people are
22 not qualified jurors because what the law asks you to do
23 again is to wait until you hear all the evidence. There may
24 be something in the evidence that you hear at the punishment
25 phase for instance that tells you even though you think that

1 person is guilty, no doubt about it, for whatever reason you
2 don't think he's going to pose a future threat to society and
3 so you answer it no.

4 And as we look at Special Issue Number 1, let's go
5 through some of these words, Ms. Shelton. They have no legal
6 definitions. We're going to rely upon your definitions for
7 these words. But I want to point out a few things to you.

8 First of all, the word "probability." The
9 legislature gave us that word. I think they gave it to us
10 for a reason. They could have used other words. They could
11 have said to the State of Texas, you have to prove to an
12 absolute certainty that this person would commit future
13 criminal acts of violence. The burden is not that high.

14 Now, on the other end of the scale, they could have
15 said -- instead of using the word "probability," they could
16 have said whether there is a chance, whether there is a
17 possibility. Those are words that they could have used also.
18 That's not the meaning of probability, obviously, or they
19 would have used those words. Probability -- let me just tell
20 you, I look upon that as meaning a likelihood, something is
21 more likely than not going to happen. It's kind of like if
22 you think about majority and minority -- I mean, to be a
23 majority out of 100 you have to have how many, 51?

24 A. Uh-huh.

25 Q. Okay. You think about that in terms of probability,

1 I think it's the same thing. Anything less than 51 percent
2 obviously would be just a possibility. They're even odds, if
3 you will, at that point.

4 Can you agree with me that probability means just
5 that, a probability? It does not mean a possibility or a
6 chance?

7 A. I do.

8 Q. Would you also agree with me that probability has to
9 mean on a scale of zero to a hundred at least 51 percent,
10 anything less would be less than a probability?

11 A. Yes.

12 Q. Criminal acts of violence. Again, some people say,
13 well, you know, in any criminal act will do. Well, no, the
14 legislature could have said, State, just prove any criminal
15 act whatsoever and that's enough. But they have qualified
16 that with of violence. A lot of people in the past have told
17 me that that means someone else has to actually be harmed in
18 some way or at least put in threat of harm.

19 Does that sound reasonable to you also?

20 A. It does.

21 Q. Okay. Finally, the word "society." Society can
22 mean everyone. It can certainly mean people like you and I
23 who live in the free world. But if you recall Judge Entz
24 telling that you a life sentence on a capital murder charge
25 means the defendant will have to serve at least 40 calendar

1 years before he becomes eligible for parole.

2 Can you see in the context of that that society
3 could also mean prison?

4 A. Uh-huh.

5 Q. It could also mean other inmates who are around the
6 defendant. It could be guards, nurses, secretaries, people
7 who visit a prison. I like to think of society as meaning
8 anywhere the defendant may find himself. Anyone who he may
9 come in contact with as being his society.

10 Now, I've had it -- I've heard it argued that really
11 society should mean only prison. Since 40 years, calendar --
12 I mean, calendar for calendar before you become eligible for
13 parole. Again, as a juror, you're free to look at it that
14 way, but you're not obligated to because if you go back to
15 wherever he may find himself to be, you're free as a juror to
16 include the free world when you think of society. Have you
17 heard about the Connally 7, the men to escaped, came up and
18 killed the Irving officer?

19 A. Uh-huh.

20 Q. Some of those people were actually serving life
21 sentences at the time that they escaped from the prison
22 system.

23 Ms. Shelton, one last thing on Special Issue Number
24 1, and don't worry about the rules of evidence here, any of
25 the legalities, but if you had your druthers, what sorts of

1 things would you like to hear about before you had to answer
2 Special Issue Number 1?

3 A. Probably what his past had been like. Had he ever
4 been in trouble before.

5 Q. Okay.

6 A. What the circumstances were that led up to the
7 crime. You know, all that kind stuff, just to see where was
8 he at that time and what had his life been up to that point.

9 Q. And, you know, a number of people tell me this same
10 thing. I've had people say in the past the best indicator of
11 the future is the past, what an individual has done in the
12 past is something they want to look at. Let me tell you that
13 normally that type of information will not be presented at
14 the first part of the trial dealing with his guilt or
15 innocence. Normally it will be presented at the second
16 phase, the punishment phase. That is normally when the State
17 of Texas is entitled to offer evidence about prior criminal
18 convictions, prior criminal arrests, any bad acts, any bad
19 character evidence. That normally will become admissible at
20 the second part of the trial. So by the time you get down to
21 Special Issue Number 1, you will know has he been in trouble
22 before or not. What sort of offenses has he been arrested
23 for. Is there some sort of pattern developing. Are there
24 other criminal acts of violence in his past. Has the
25 criminal justice system dealt with him. Have we attempted to

1 rehabilitate him. What's been his reaction to those
2 efforts. You get to know all those things.

3 Secondly, as you just indicated, you get to look at
4 the crime itself, just what led up to this case. Is this
5 some sort of relationship that's existed for a long time that
6 went bad for whatever reason. Or is this a
7 stranger-on-stranger, very random kind of offense. What's
8 the motivation for the offense. Who is the victim. How was
9 the crime carried out. What was the defendant's reaction
10 after he committed the crime. Was he remorseful. Was he not
11 remorseful.

12 Now, I can't tell about the specific facts in this
13 case. Obviously, we want you to wait until you're a juror to
14 hear those facts, but I am entitled to ask you one question.
15 And the question is this, because we want jurors to base
16 their verdict on the law that is given to them by Judge Entz,
17 as well as the facts. We do not want jurors to render
18 verdicts merely on sympathy or emotion.

19 Now, if the evidence in this case showed, Ms.
20 Shelton, that the victim, Bertie Cunningham, was an
21 80-year-old woman at the time that she was murdered, would
22 you still be able to look at the evidence and be fair and
23 impartial to both sides, or do you think that you'd simply
24 decide the case on emotion or sympathy?

25 A. I think I could look at it and be fair.

1 Q. Okay. You know, obviously that may be a
2 circumstance that you would want to take into account on
3 punishment because you are entitled to look at the
4 circumstances of the offense. But as far as guilt/innocence,
5 you're still going to make the State of Texas prove our case
6 beyond a reasonable doubt, correct?

7 A. Uh-huh. That's correct.

8 Q. Let's look then at Special Issue Number 2. By the
9 time you get down there, Ms. Shelton, you're two-thirds of
10 the way to a death sentence. You've already found the
11 defendant guilty. You've already decided beyond any
12 reasonable doubt that he will constitute a continuing threat
13 to society. What the law would ask you to do at that point
14 is to forget your verdict for guilt, forget how you answered
15 Special Issue Number 1. Take another look at all of the
16 evidence in this case and then decide is there something in
17 that evidence, regardless of what it is, regardless of where
18 it came from, is there something in that evidence that
19 persuades you that this man should get a life sentence
20 instead of a death sentence. That's what we really ask you
21 to do.

22 A problem some jurors have expressed to me is this,
23 they have told me, if I think a man is really that dangerous,
24 that he's going to constitute a continuing threat to society,
25 I'm not going to look at the evidence because I'm going to

1 make sure he gets death. I'm just not going to take a
2 chance. Morally I couldn't put another person in harm's way
3 so to speak. Well, they're not qualified jurors obviously
4 because the law does ask you to keep an open mind. It may be
5 a situation where right now as you sit there, you can't think
6 of what that circumstance would be that would change your
7 mind. You're not -- you're not required at this time to tell
8 us what that would be. But what you are required to say is
9 this, and that if you got down to that point, that you would
10 look at the evidence again. And if you did see something, no
11 matter what it is, and you truly thought it was important
12 enough to spare this man's life, that you would do that and
13 that you would answer Special Issue Number 2 yes and give him
14 a life sentence.

15 Do you feel like you could go through that process
16 and keep an open mind?

17 A. I do.

18 Q. Okay. Now, as we look at mitigating circumstances,
19 those are very personal. We don't have a list of things
20 we're going to ask you to check boxes on.

21 When you hear that phrase, does anything come to
22 mind right off -- offhand?

23 A. Maybe not particularly in this particular case, but
24 I think there can be times when a person would commit a crime
25 that they would not normally commit because of another factor

1 driving them like, you know, I've heard of maybe a man trying
2 to support his family and everything falling apart and as a
3 last ditch effort, he goes out and commits a crime he
4 wouldn't usually do just to try to save his family.

5 Q. Right.

6 A. I'm not saying that that would be a murder or
7 whatever, but that's a mitigating circumstance. Other things
8 going on in the life that force a person to make decision
9 that they wouldn't normally make.

10 Q. Right. You know, and again as you see in Special
11 Issue Number 2, you get to look at his background, his
12 character. Maybe the person you're talking about has never
13 been in trouble before, and, yeah, he has starving children
14 at home and so he goes and steals food and whatever it may be
15 and you'd certainly want to -- not excuse that, but at least
16 maybe lessen his punishment for that. But you do get to look
17 at the background and character. You get to look at the
18 circumstances of the offense, why was it was committed.
19 Again, was it out of some sort of necessity. Is it a crime
20 of passion of some sort. You get to look at all those
21 things.

22 Let me go through some of the things that jurors
23 have mentioned to me in the past and just get your reaction
24 to those. Sometimes people tell me that age is a mitigating
25 factor, the thought being that a younger person can more

1 easily rehabilitate himself than an older person. On the
2 other hand, I've had just as many people tell me, age doesn't
3 matter. As long as that person is old enough to know what
4 he's doing, to know the consequences of his actions, he still
5 must be held accountable. I can tell you in the State of
6 Texas you have to be at least 17 years of age before you can
7 be tried for death in the State of Texas.

8 How -- what are your feelings about age?

9 A. I tend to go more with a younger person, even though
10 they can know what they're doing, they don't have all of
11 life's experiences to draw on that an older person. And if
12 someone older did that, in my mind there would be probably
13 more of a chance that they might have done something similar
14 in the past, because it wouldn't be just something they woke
15 one day and decided. I think sometimes younger people don't
16 fully think through the consequences of their actions more
17 than older person.

18 Q. Yeah. When you say younger person, what sort of age
19 are you talking about in your mind?

20 A. In my mind up into the twenties.

21 Q. Okay. So teenager, is that the kind of person
22 you're talking about?

23 A. Teenager, up to 25 or 26, somewhere like that. I
24 would think -- and I guess I look at that based on the
25 children I have and their ages and the decisions they make

1 and that kind of stuff. I don't think that young people of
2 that age always make real adult decisions.

3 Q. Okay. Some people have talked about alcohol or drug
4 abuse. What are your feelings about that?

5 A. I think it bad. I think it leads to a lot of things
6 that without those substances would not occur. I've had
7 personal dealings with that, and at least things that
8 shouldn't happen.

9 Q. I believe your stepson had had a problem; is that
10 correct?

11 A. That's correct.

12 Q. Can you tell me a little bit more about that case?

13 A. Sure. He was a driver. He was 18 years old, and he
14 was driving with I believe two or three other boys in the
15 backseat of the car. He doesn't live with me. He lives with
16 his mom in Rowlett. But he was driving and they had been
17 drinking and they had gone to a Halloween party and coming
18 home from there, he lost control of his car and flipped it
19 and ejected one of his best friends from the backseat of the
20 car resulting in his death. He was put in jail for I think a
21 month and he was let out on probation and told that if he got
22 picked up again, he would go back longer. Well, he did. He
23 did not do something of that nature, but he was horsing
24 around in his truck got stopped and went to spend six more
25 months in jail and that was January through June last year.

1 You know, it's hard -- it's hard to be the parent, step
2 parent, whatever, and watch something like that happen, but I
3 also felt like justice was served because he needs to learn
4 the consequences of his actions and deal with those things.
5 And hopefully he's going to make better choices from here,
6 but it has been close to me.

7 Q. Right. Do you think that alcoholism is a disease or
8 drug use is a disease?

9 A. I do.

10 Q. Okay. I believe that you had also mentioned that
11 your husband had gone through an alcohol rehab program?

12 A. That's correct.

13 Q. Was that recently?

14 A. It is. He's been sober for about -- almost two and
15 a half years. I've been married to him for almost two
16 years. He had been sober about six months when we married.

17 Q. Okay. If the evidence in this case showed that
18 alcohol or drugs had possibly been used in connection with
19 this offense, would you still be able to be fair and
20 impartial?

21 A. I think that I would, because I do believe it's a
22 disease. And I believe that it's something that sometimes
23 people can't quit just because they want to. It takes a lot
24 higher power than that.

25 Q. Okay. Some people have mentioned how a person was

1 brought up. Specifically, oh, I've had some people tell me
2 if a person grew up in poverty perhaps, deprived childhood,
3 that might be a mitigating factor.

4 What are your feelings there?

5 A. I agree with that, but not necessarily poverty
6 because I think a lot of people were raised in poverty that
7 grow up to be very upstanding people and vice versa.
8 Probably that's true with anything, but I think more being
9 raised in violence and being raised subjected to horrible
10 cruel things might give a person more propensity to repeat
11 that kind of behavior.

12 Q. Okay. In that regard some people tell me about
13 abuse, if they've been the victim of sexual abuse or mental
14 or physical abuse. Is that what you're talking about?

15 A. Yes.

16 Q. Okay. Have you ever known anyone who has had that
17 situation occur to them?

18 A. I really can't think that I have.

19 Q. Okay. Do you think that it might be possible that
20 an individual might make that claim falsely against another
21 person?

22 A. Say that they had been abused by another person?

23 Q. Yes, ma'am, when it never happened?

24 A. There are people I'm sure that would do that, but I
25 think of children mostly in that situation and I don't think

1 it's very often that you find a child that would make up a
2 situation like that, unless that child was a little bit
3 mentally ill in the first place. I mean, I feel like most of
4 those things, they come from somewhere. The child doesn't
5 dream them up.

6 Q. Right. Let me -- let me talk to you for a little
7 bit about some of the legal requirements in this case. These
8 are principles that will assure Mr. Murphy receives a fair
9 trial. The first one is the presumption of innocence. The
10 State of Texas, I believe the Judge has told you, has the
11 burden of proof in this case. We have to prove Mr. Murphy's
12 guilt beyond a reasonable doubt. If we fail to do that,
13 then, you know, you're required by law to find him not
14 guilty. Some people, you know, tell me that's no problem for
15 them. Some people take a little bit different attitude.
16 They say, well, after all something has to already occur. I
17 mean, police don't just go out at random and snatch people in
18 the middle of the night and charge them with capital murder.
19 And in this case obviously Mr. Murphy has been arrested of
20 the offense of capital murder, he's been charged with that
21 offense, he's already been indicted by the Dallas County
22 grand jury for the offense, so a number of things have
23 already occurred.

24 And I noted in your questionnaire that you in
25 response to this question, if someone is accused of capital

1 murder, he should have to prove his innocence. And you
2 agreed with that statement.

3 Can you tell me a little bit more about your
4 feelings there?

5 A. I think that just because everybody else thinks that
6 someone is guilty of something, until you've heard all sides,
7 you really can't reach that verdict. And I think that, you
8 know, all the facts have to come out. And I think the person
9 being accused has every right to be able to let all those
10 facts come out and everybody to weigh that out and make a
11 decision from there, because it's their life that you're
12 talking about.

13 Q. And I've had people tell me that if they were
14 accused of capital murder, that they would certainly want to
15 get up there on the witness stand and tell their story if
16 they were innocent. They can't imagine why someone would not
17 testify. And I see you kind of shaking -- you're nodding
18 your head too.

19 Is that kind of the way you feel, too?

20 A. Definitely.

21 Q. In this case one of the rights that Mr. Murphy has
22 is the right to remain silent. The Judge would tell you if
23 he doesn't testify that you cannot consider that for any
24 reason, couldn't hold that against him. And again, some
25 people have said, that's fine, they can follow the law. And

1 I've had other people tell me they don't know if they would
2 be able to do that. Again, you know, if they were there,
3 they would want to testify. They can't imagine why someone
4 else would not testify. And I've had people say that's just
5 something that's going to be very difficult for me to put out
6 of my mind if I go back there on a charge such as this one.
7 If the defendant does not testify, that's something I'm going
8 to be thinking about, I'm going to wonder about. And it
9 might influence the way I look at the State's evidence. It
10 may influence me with how strong I think the State's case
11 is.

12 How do you honestly feel about that, Ms. Shelton?

13 A. I think it would make it difficult because you're
14 not going to hear his side and, you know, it's going to be
15 everybody else's words and not his words. And in a way I
16 would wonder why would a person, if they were innocent, not
17 want to speak up on behalf of their own innocence. But, you
18 know, I guess I'd have to kind of do some soul searching and
19 think about if I were accused of something that I had done,
20 what would I feel at the time, would I be able to talk, would
21 I be emotionally not able to do it or whatever, but I do
22 think it would be difficult to not be able to hear that
23 input.

24 Q. Okay. Let me go through another -- another area
25 with you then, and that deals with the proof in this case.

1 The State has to prove all the elements of the indictment
2 beyond a reasonable doubt.

3 Now, in this case that means I've got to prove a
4 number of things. I have to prove that this individual over
5 here is the person who did the killing, how he did the
6 killing, and I've got to show that it occurred during a
7 robbery or kidnapping. There's a number of other things I've
8 got to prove. I've got to prove that it happened on or about
9 a certain date, and I have to prove that it happened in
10 Dallas County, Texas. And I want to give you an example, and
11 these examples are not meant to imply that this is what's
12 going to happen in this case. It's simply to illustrate the
13 law in this case.

14 Let's say that you had a case such as this, a
15 capital murder case, and let's just -- let's say that I'm the
16 defendant. Let's say that I go out and I decide one day
17 that -- maybe I just have a hatred toward children. And I
18 go out and I intentionally pick out a child care facility
19 where there are a hundred small children and I decide that
20 I'm going to fire bomb that facility and I do that and I do
21 that with the hope that every child in there will die. No
22 one sees me. I get away scot-free, but let's say that, oh, a
23 few days later the police stop me for some -- for some reason
24 and I begin to talk about the issue. Maybe I'm just starting
25 to brag and I'm going to tell somebody what I did. I'm

1 feeling so good about it. And they take me down to the
2 station, and let's say that in the course of that
3 conversation I say I'll give you a written statement. Now,
4 if you keep up with these police shows and lawyer shows, you
5 know, there's certain warnings that have to be given on a
6 case such as that.

7 Let's say that the officer forgets to give me one of
8 the four warnings necessary. He forgets to tell me that I
9 have a right to remain silent. Now, I didn't want to remain
10 silent. I wanted to talk. I mean, I was bragging. I was
11 happy that he would know about that situation. Well, he
12 takes my statement. I get arrested. I get charged. I get
13 indicted, and I'm brought to trial. The detective is up
14 there on the witness stand talking about it, and he honestly
15 says on questioning, you know, I don't remember giving him
16 that particular warning. I didn't really see a need to. I
17 mean, after all, he wanted to talk to me anyway. I couldn't
18 stop him even if I wanted to. Well, the Judge in that kind
19 of case would tell you that if all the warnings were not
20 given, you'd have to disregard that statement.

21 Now, the fact of the matter would be in that case
22 let's say that confession gives details that only the killer
23 would know. You don't have any doubt in your mind that I
24 have done exactly that. Maybe in the statement I've even
25 gone so far as to say if I get another chance, if I ever get

1 free again, I'm going to the nearest child care center and
2 I'll do it again until they stop me. You go back to that
3 jury room, you got 11 other people back there saying we're
4 not about to let a dangerous individual like that run free
5 and kill children in this county. The Judge has told you
6 you've got to throw that statement out. The other 11 are
7 saying we don't really care because there is no way if we
8 throw that statement out, there is no other evidence, that
9 man is going to go free. And I've had people tell me that
10 their conscience simply would not allow them to do that. It
11 just simply violates their conscience to the degree that they
12 don't believe they can follow that law and let a dangerous
13 man walk out of this courthouse and perhaps kill again. I've
14 had other people say they could. Again, the situation would
15 be in that case if you follow the law, I walk free, I go out,
16 I can possibly do it again. And, you know, it's just a
17 situation where everyone's conscience and belief systems are
18 a bit different.

19 Can you tell me what your feelings are about that
20 situation, Ms. Shelton?

21 A. I probably would have a real hard time being able to
22 not find you guilty based on everything you just told me, and
23 I guess that enters into where the law comes in and what you
24 have to do because the law says it. But, you know, of
25 course, you're playing on my emotion, too, of children and if

1 I thought you had a strong propensity to go out and kill
2 kids, I wouldn't want you to be back on the street to do it
3 again.

4 Q. Okay. Same thing, I guess, if I told you that I had
5 prove it happened in Dallas County. Let's say for whatever
6 reason the child care center was in Tarrant County or Kaufman
7 County and the case was wrongly filed in Dallas County. Or
8 maybe it was in Dallas County, but the prosecutor just didn't
9 ask the right question to prove that. You have the same kind
10 of dilemma there where you know good and well I'm as guilty
11 as I can be. There is no doubt about my guilt in your mind.
12 And yet because the State of Texas failed to ask one
13 question, you see, it's another one of these loophole
14 technicality kind of situations that most people tell us
15 about where they say, you know, I know what the law is going
16 to require me to do, go back there and say not guilty because
17 I didn't prove Dallas County. Well, everybody knew it was in
18 Dallas County. That's crazy. Or what does it matter that it
19 was over here in Tarrant County. You've still got a very
20 dangerous individual. That's just one of those situations
21 where my conscience and my beliefs come in conflict with the
22 law where I don't feel that I can -- I can follow that law.
23 So you haven't taken an oath yet to follow the law in this
24 case. All you've done is take an oath to tell us the truth,
25 and I appreciate the fact that you have. We're not going to

1 put you in a situation in a case such as this where you're
2 going to be forced to violate your conscience. No one wants
3 to do that. In that kind of case where the State proves
4 everything necessary to show you that again I'm a very
5 dangerous individual, I've committed a capital murder, you
6 know what the truth truly is. If they fail to prove it
7 happened in Dallas County, Texas, are you going to be able to
8 really say not guilty and watch me walk out of the courtroom,
9 or do you feel like it's another situation where you're just
10 going to have a very difficult time of actually doing that?

11 A. I'm probably going have a difficult time. The one
12 thing I would be concerned about I guess is if that hasn't
13 been done in the appropriate way, were there any other parts
14 of it that might have been done wrong, too, which can put
15 doubt in your mind that might not have been there otherwise.
16 If that makes sense.

17 Q. Yes, ma'am, it does. Ms. Shelton, I think that's my
18 time. I appreciate your time this afternoon. More
19 importantly, I appreciate your honesty in answering my
20 questions.

21 THE COURT: Ms. Shelton, do you want to take a
22 break before we continue with the defense?

23 VENIREPERSON: No.

24 THE COURT: You're only halfway through.

25 VENIREPERSON: Okay. That's fine. I'll

1 stay.

2 THE COURT: You ready? Okay. You need to
3 take a stretch break or rest room break?

4 VENIREPERSON: No, I'm fine. I've never done
5 this before, so I didn't know what I was doing.

6 THE COURT: We understand.

7 Mr. Byck.

8 MR. BYCK: Thank you, Your Honor.

9 Cross-Examination

10 By Mr. Byck:

11 Q. Ms. Shelton, I just have a couple of very brief
12 questions for you, ma'am.

13 You stated on page 13 of your questionnaire that it
14 would be somewhat difficult making some child care
15 arrangements in the afternoon. As the Judge has told you, we
16 expect this case to go from five to eight working days, and
17 that -- those are usually I guess from 8 o'clock in the
18 morning to 4:30, 5 o'clock in the afternoon. The problem
19 comes, ma'am, when the jury goes back to deliberate. It will
20 do that on at least one occasion and perhaps two. On those
21 occasions it's totally in the jury's hands. If the jury
22 wants to sit back there and yell and scream at each for 36
23 hours in a row, they get to do that and we have absolutely no
24 say about what they do while they're deliberating.

25 Is this something that's going to be of a concern to

1 you in this situation if you were to be on a jury?

2 A. It's a concern to me, but it's not something that I
3 can't work with. If I have the notice to take care of the
4 child care, it's something that I can arrange and make good
5 arrangements for my son, but it is a concern.

6 Q. Okay. Mr. Davis asked you a couple of questions
7 about technicalities. And very frankly, you know, what is
8 one person's technicality is another person's constitutional
9 safe guard. And while different people feel different
10 thoughts about them, and any thought is okay, believe me,
11 it's your opinion, not everybody can go along with that kind
12 of a situation. I thought I heard you to answer Mr. Davis
13 one way, but I just want to make sure about it.

14 We were talking about -- or Mr. Davis was talking
15 about the situation where he's an arsonist. And let me use
16 my name instead of his, because if I do, I'll get it all
17 confused and we'll be here all afternoon.

18 If I'm an arsonist and I go out and I burn down a
19 school and I get apprehended. I come back and the police
20 want to talk to me. In order for them to use any statement
21 that I give them, they have to give you what is known as the
22 Miranda warnings. And the Miranda warnings, I'm sure you've
23 heard them a million times, but they're you have the right to
24 remain silent; if you choose not to remain silent, you have
25 the right to have an attorney to be with you during

1 questioning; if you are too poor to afford an attorney, we'll
2 appoint one for you; and finally, you have the right to
3 terminate the questions.

4 Well, let's say I'm taking over Mr. Davis's role as
5 the arsonist. And I have listened to these officers and I
6 want to talk to them and they're telling me that I have the
7 right to remain silent and I have the right to have an
8 attorney and I say I don't want to remain silent and I don't
9 want to have an attorney. And they say if you're too poor,
10 we'll appoint an attorney. And I say don't be calling me
11 poor, I've got plenty of money to hire an attorney. Well, we
12 never get to the point where they say you have the right to
13 terminate the interview. I never wanted to terminate the
14 interview. I want to talk. I want to tell you about it, you
15 know, the great fun I have burning down schools and killing
16 little children because I'm a sick puppy, ma'am.

17 Now, I'm going to go a couple of steps further. You
18 believe that I was given three of the four warnings. You
19 also believe that I was not given the fourth warning. You
20 believe that I did the crime. You believe that because I
21 told the police that I used a special concoction, my special
22 school concoction I call it. And they brought a chemist in
23 who after the building had cooled off was able to collect
24 some samples and do some chemicals tests and say, yes, the
25 accelerate used to start this fire was chemicals X, Y, and Z

1 about -- only about which I knew and only about which I was
2 the one that told. Okay. You also know there's a couple of
3 other things about me. That is while during my trial I was
4 up in jail starting fires. And you knew about that because
5 the State brought a couple of jail inmates down who were just
6 absolutely terrified about going to sleep at night with me
7 anywhere on the floor. And they also had something else to
8 tell you, too. They said, you know, Ms. Shelton, and ladies
9 and gentlemen of the jury -- of course, they couldn't address
10 you personally. But they said while Mr. Byck was upstairs,
11 he was asking us questions like what kind of schools do you
12 have in your neighborhoods, are they brick schools or are
13 they wooden schools, are they in good repair, any fire
14 hydrants near them because I've obviously got something in
15 mind. Okay. You come down here and the Judge says that
16 y'all have to believe beyond a reasonable doubt all four of
17 those warnings were given. You know beyond a reasonable
18 doubt three of them were. You know also that the fourth one
19 was not. You know what kind of person I am from what I've
20 been doing up in jail. You know what kind of person I want
21 to be from what I've been asking the other jail inmates up
22 there. And you get back, you're the last juror out of the
23 box and you get back into jury room and before you even have
24 a chance to go through that door, the bailiff shuts the door
25 behind you and you're in the jury room and all 11 members of

1 the jury turn as one person on you and say, Ms. Shelton, we
2 got to get this guy off the streets. This guy is really,
3 really dangerous. I have kids. You have kids. We can't let
4 him out there anymore. Now, the Judge has given us some
5 story about some little technicality. And it was a
6 technicality, Ms. Shelton, that he didn't even ask for. He
7 could have asked for it at any time. As a matter of fact, he
8 sort of asked against it. He sort of said, no, I don't want
9 to stop talking. Maybe there's a piece of evidence in there
10 where somebody said, hey, you want a break for five minutes
11 and get a cup of coffee or Coca-Cola and I said, no, I want
12 to keep on talking. So you go back there and they say, Ms.
13 Shelton, the 11 other of us have decided we're going to vote
14 him guilty because we cannot in good conscience let him out
15 the door and into the streets, can't do it.

16 Would you go along with them, vote me guilty?

17 A. Oh, gosh, that's a hard question. I guess --

18 Q. I thought you answered Mr. Davis that, yes, you
19 would --

20 A. I would, but, you know, if you said do you believe
21 we didn't give us -- we didn't give this one piece of
22 evidence or we didn't ask this one thing of him that we were
23 supposed to, do you believe that, and I say, yes, I believe
24 you forgot to do that and you did not provide him that right,
25 and then you say do you believe, you know, he should be

1 locked up, yes, I do. But if one negates the other one, then
2 I'm going to have to go with what the law says. If that
3 makes any sense. I mean, my heart is still going to be
4 thinking the same as the jurors are thinking, he needs to be
5 locked up.

6 Q. It does. It does make some sense, ma'am. And it's
7 a very difficult decision. And I appreciate that. I thought
8 I heard you answer one way, but now I've heard you answer
9 another. And you are telling me that you would be compelled
10 personally, ethically, morally, whatever, to follow the
11 Judge's instructions, even though you knew if you voted not
12 guilty, I could never be tried again. And while you and I
13 went down in the elevator, you are going out to your car, I
14 was going across the street to 7-Eleven to get myself a
15 couple of disposable lighters, you could still vote me not
16 guilty in that situation?

17 A. If I thought you were going to be able to walk free,
18 I couldn't. If I thought you were going to get life in
19 prison, there would be some comfort there knowing that you
20 weren't out on the street.

21 Q. Well, let's go back a little bit. Let's make sure
22 we get your -- we get you clear in this situation. The
23 situation that I set up with the confession and only I knew
24 what was going on and the three warnings, all go to the point
25 that the only evidence there is against me is that

1 confession. Nobody saw me do it. They didn't find any
2 fingerprints. They didn't find my magic potion in the back
3 of my car, in my living room, or anything like that. I made
4 no other statements to anybody. No one else can convict me
5 of that crime. There is no other evidence to that crime
6 except my confession.

7 THE COURT: This is in the guilt/innocence
8 phase of the trial, not the penalty phase, Ms. Shelton.

9 Q. (By Mr. Byck) In my confession, in order to even
10 consider my confession, the Judge is going to instruct you,
11 you have to believe beyond a reasonable doubt that all four
12 of those warnings were given. And they weren't. Three of
13 them weren't, and I didn't want the other one. But we also
14 have the problem of what you're afraid that I'm going to do
15 if I am found not guilty, because remember, if there is no
16 evidence, I have to be found not guilty. If I'm found not
17 guilty, I can never be tried for that offense again. So in
18 other, you words -- I don't want to say this in exactly this
19 way, but you and that jury have given me a shot at another
20 free school.

21 Now, it's a -- this is a very difficult question.
22 It's a very hard one, and believe me, I understand. I
23 understand it is. In that situation where that confession
24 was the only evidence, in that situation where you knew I was
25 going to go free unless you used that confession, in that

1 situation with the other 11 members of the jury said, Ms.
2 Shelton, we can't let him go, we just can't do it. We all
3 live here. What would you do?

4 A. Gosh, like I said, I would more want to say that you
5 were guilty, but I could not say to a Judge I believe the
6 fourth one was given when I knew it had not because I can't
7 lie.

8 Q. Well, that's exactly right. But on the other hand,
9 you are not asked for a specific verdict like that. You are
10 only asked for a verdict of is he guilty, is he not guilty.
11 You would never be asked that technical question of whether
12 you believed three out of the four or whether you found that
13 as a fact or whatever. So if you didn't have to answer that
14 specific question, but you just had to answer innocent or
15 guilty, what would you do?

16 A. I'd probably have to go with guilty.

17 Q. Okay. That's fair enough, ma'am. We appreciate
18 that.

19 MR. BYCK: Thank you, Your Honor. That
20 concludes my questioning.

21 THE COURT: You would not be able to follow
22 the Court's instructions and disregard the confession and let
23 this arsonist or future arsonist go?

24 VENIREPERSON: It's hard to say. I don't
25 think that I could, though, based on all of that, based on

1 hearing him say he's going to go out and do it again. What
2 if it's my kid's school next?

3 THE COURT: That's right.

4 VENIREPERSON: You know, I -- so I don't --
5 you know, I don't.

6 THE COURT: Sheriff, you may excuse Ms.
7 Shelton.

8 (Venireperson excused from courtroom.)

9 THE COURT: Mr. Davis.

10 (State challenge for cause - Ms. Shelton)

11 MR. DAVIS: The State submits the juror for
12 cause.

13 (Challenge for Cause Granted)

14 THE COURT: State's challenge is granted.

15 MS. MILLER: The next two, Mr. Hiller and Ms.
16 Morton, both said that they have served on criminal juries in
17 the past, but we do not have any juror evaluations on either
18 one of them.

19 THE COURT: Thank you. Do you so note, Ms.
20 Balido?

21 MS. BALIDO: Yes, Your Honor.

22 THE COURT: Annette Morton is next, I believe.

23 (Venireperson brought into courtroom.)

24 THE COURT: Ms. Morton, welcome back.

25 VENIREPERSON: Hi.

1 THE COURT: How are you? Ms. Morton, may I
2 ask you to raise your right hand and again be sworn in,
3 please?

4 (Venireperson additionally sworn.)

5 VENIREPERSON: I so swear.

6 THE COURT: Thank you. You may lower your
7 hand, Ms. Morton.

8 Let me reintroduce the individuals whom we see
9 seated at counsel table. We have a couple of vacancies, and
10 I'll introduce their vacant seats and who I anticipate that
11 they will be coming before you leave us this afternoon.

12 Beginning first to the left, Ms. Morton, we begin
13 with lead prosecutor for the State, Senior Prosecutor in the
14 Dallas District Attorneys office at the present time, the
15 Honorable Greg Davis.

16 MR. DAVIS: Good afternoon.

17 THE COURT: He, I anticipate, will be joined
18 shortly by co-counsel, the Chief Prosecutor assigned to this
19 court by Dallas District Attorney Bill Hill. Mr. Davis's
20 co-counsel is the Honorable Mary Miller.

21 Moving on to the next table, we begin first with one
22 of the three defense attorney, the Honorable Jennifer Balido.

23 MS. BALIDO: Good afternoon.

24 VENIREPERSON: Hi.

25 THE COURT: Seated next to Ms. Balido is her

1 client, the accused, the defendant, Mr. Jedidiah Isaac
2 Murphy.

3 THE DEFENDANT: Good afternoon.

4 VENIREPERSON: Hello.

5 THE COURT: Anticipate that Ms. Balido will be
6 joined momentarily by one of her co-counsels, the Honorable
7 Michael Byck, and may well in addition be joined by the third
8 and remaining attorney on behalf of the defense, the
9 Honorable Jane Little.

10 Ms. Miller from the District Attorneys Office --

11 MS. MILLER: Hi.

12 THE COURT: -- has just walked in and has
13 joined Mr. Davis at the prosecutor's table.

14 Ready to begin?

15 VENIREPERSON: Sure.

16 THE COURT: You will know before you leave us
17 within an hour or so whether or not you remain under
18 consideration as a juror in this case.

19 We'll begin again with the Honorable Greg Davis.

20 Mr. Davis.

21 MR. DAVIS: Thank you. May it please the
22 Court.

23 ANNETTE MORTON

24 was called as a venireperson by the Court and, after having
25 been first duly sworn, was questioned as follows:

Voir Dire Examination

By Mr. Davis:

Q. Good afternoon again, Ms. Morton. How are you?

A. I'm just fine.

Q. Good. Ms. Morton, for the next 30 minutes or so I'll have a chance to speak with you about some of the issues in this case. One thing I want to say to you is there are no right or wrong answers this afternoon. We're not going to grade your papers. Most of the questions that I'll ask you today deal with how you feel about something, what your opinions are. I've done enough of these to know that everyone has differing opinions. So as long as we know how you honestly feel, that's all that we expect. Okay?

Ms. Morton, I want to take you back to the time that you came up on the jury panel and Judge Entz told you that we were seeking the death penalty against Mr. Murphy down here. Do you remember what your first reaction to that was?

A. Trepidation.

Q. Uh-huh.

A. I've never served on such a jury and so that --

Q. Just because of the nature of the case, the seriousness of the case?

A. The seriousness of the verdict.

Q. Uh-huh. Right.

A. And therefore the seriousness of the case.

1 Q. Right. You've had a little bit of time, I guess, to
2 think about your possible service on this case. I know that
3 some jurors have told me that while they're in favor of the
4 death penalty, they're not sure that they could personally
5 take part in a case such as this one. If necessary, take a
6 pen in hand, sign a verdict form that would require Judge
7 Entz to impose a sentence of death on Mr. Murphy. As you
8 know, in the State of Texas executions happen on a regular
9 basis, so I think it's only fair to assume that if a death
10 sentence is handed down in this case, it will be carried out
11 at some date in the future.

12 Ms. Morton, if you would, could you tell me how
13 you -- how you honestly feel about taking part in this
14 particular case where you may be required to return a verdict
15 that results in the eventual death of this individual down
16 here?

17 A. I -- I would not choose that that would happen. I
18 would -- and the reason I'm here is because I feel it's a
19 duty for me as a citizen of the United States to participate
20 in the legal system. I would not relish it. If I were
21 selected, I would do the best I could --

22 Q. Uh-huh.

23 A. -- according to the legal ramifications and
24 following whatever guidelines I was given.

25 Q. Okay.

1 A. Do I want to do this? Probably not.

2 Q. Okay. Here is what I would expect from jurors on
3 this case. First of all, if I prove Mr. Murphy's guilt
4 beyond a reasonable doubt, if I meet my standard of proof in
5 this case, I would expect a jury to vote guilty, knowing that
6 they've now taken one step closer to a possible death
7 sentence.

8 If I proved this man's guilt beyond a reasonable
9 doubt, could you and would you find him guilty?

10 A. Yes.

11 Q. Okay. If I proved to you beyond a reasonable doubt
12 that Special Issue Number 1 should be answered yes, would you
13 answer it yes?

14 A. Yes.

15 Q. If you looked at all the evidence on Special Issue
16 Number 2 and decided after you looked at all the evidence
17 that there were no sufficient mitigating circumstances, could
18 you answer it no at that point knowing that a death sentence
19 would be imposed on Mr. Murphy?

20 A. No. I would follow whatever the guideline was.

21 Q. Okay. So if you looked at all the evidence and you
22 said I don't believe there are any sufficient mitigating
23 circumstances to change death to life, you'd answer no. If
24 you felt like there were mitigating circumstances, you'd
25 answer it yes; is that correct?

1 A. Yes.

2 Q. Okay. Ms. Morton, can you tell me why you're in
3 favor of the death penalty?

4 A. Because I think there are crimes against society
5 that deserve the death penalty.

6 Q. Can you give me an example of a type of crime that
7 you think would fit into that category?

8 A. I believe the Oklahoma City bombing is one of those
9 such crimes.

10 Q. Uh-huh. Right. Any other cases perhaps that you've
11 heard about in the media beside the Timothy McVeigh case?

12 A. No, I really haven't. I don't read the newspaper
13 very often.

14 Q. Okay. In this case what we've done is we've alleged
15 that this is a capital murder because it's an intentional
16 murder committed during the course of a robbery or a
17 kidnapping. So it's actually an intentional murder plus
18 another felony offense. Now, without going into the specific
19 facts of the case, do you feel like this is the type of case
20 where a death penalty might be warranted, depending on the
21 facts that you heard?

22 A. I really have no idea. I think it really would
23 depend. Personally it would depend on the facts of the case.

24 Q. Okay. Let me -- let me tell you, I'm not permitted
25 to go into the specific facts with you. Obviously, we want

1 you to wait until you hear all the facts from the jury box
2 over here. But I am entitled to ask you this question. If
3 the evidence in this case showed that the victim, Bertie
4 Cunningham, was an 80-year-old woman, do you feel like you
5 could remain objective and fair to both sides, or do you
6 think that might affect your ability to be fair and
7 impartial?

8 A. I think I would be as fair and objective as I
9 could. I don't think a person's age would make a difference.

10 Q. Ms. Morton, have you ever known anyone who's used
11 illegal drugs?

12 A. No.

13 Q. Okay. Do you have any sense of how cocaine or
14 heroin or LSD or speed might affect an individual's brain?

15 A. No, other than typical television shows, movies,
16 that kind of thing. So I don't have any firsthand experience
17 either personally or from a medical relationship or anything
18 like that.

19 Q. Do you think that it's possible that there may be
20 people in Dallas County, Texas, today who are capable of
21 going out and intentionally killing another human being just
22 to get their property from them?

23 A. Yes.

24 Q. Do you think it's possible that people could do
25 that, intentionally kill to rob a person and then walk away

1 and have absolutely no feeling at all about having done that?

2 A. Yes.

3 Q. Let me talk to you a bit more about these special
4 issues, Ms. Morton. Special Issue Number 1 and 2, remember
5 you've already found the defendant guilty of capital murder
6 before you get these two special issues. All right. We've
7 already found the individual guilty. We've also gone through
8 a punishment phase. Punishment phase is a little bit
9 different from the guilt/innocence phase because some types
10 of evidence may now become admissible in the punishment phase
11 that were not admissible at the first part of the trial.
12 Generally that deals with the defendant's background and his
13 character, criminal convictions, commissions of other bad
14 acts or other crimes. Those sorts of things become
15 admissible. If they are available, then the State can tell
16 you about that at the second part of the trial. Then we come
17 to the special issues.

18 Ms. Morton, as you look at Special Issue Number 1,
19 can you think -- without regard to any legal rules or rules
20 of evidence, can you tell me what sort of things you would
21 like to hear about in order to answer Special Issue Number 1?

22 A. I would probably want to know if there were a
23 history of criminal acts of violence in the past, how long
24 the history had been, the kinds of crimes committed, and
25 perhaps the potential for that continuing to occur.

1 Q. Uh-huh. Okay. A lot of people have told me the
2 very same thing. Among other things, you'd also be able to
3 see has he been through the criminal justice system before.
4 Has the system tried to help him in the past. Have we tried
5 to rehabilitate him. What was his reaction. Did he agree to
6 the rehabilitation, or did he say I don't want any part of it
7 for instance. You get to hear all those sorts of things.

8 The other thing you'd be entitled to look at would
9 be the circumstances of the offense itself. Why was it
10 really committed. Who was it committed against. How was it
11 committed. You know, you could have all sorts of
12 situations. Maybe it's been a long-standing relationship
13 that went sour for whatever reason and an individual gets
14 killed. It could be a stranger-on-stranger, very random kind
15 of selection process for a victim. And I've told you the age
16 of the victim in this case. How was it committed. Again,
17 what was his reaction after he committed it. You may have a
18 situation where somebody is instantly remorseful for what
19 they've done. They stay at the scene. They call the
20 police. They cooperate with the police fully. They answer
21 all the questions honestly. Or I guess you could have a
22 situation where the person actually runs off or hides or does
23 other things that are inconsistent with the feeling of
24 remorse.

25 Do you feel like those sorts of things might also be

1 helpful to you in answering Special Issue Number 1?

2 A. I think it would be helpful.

3 Q. Ms. Morton, looking at a few of these words in
4 Special Issue Number 1, they don't have legal definitions.
5 We're going to rely upon your definitions of these words.
6 And so I want to go through some of these with you.

7 The first word is probability. The legislature gave
8 us that word. I guess they could have picked something on
9 the extreme if they wanted to. They could have forced the
10 State to prove to an absolute certainty that this person
11 would commit criminal acts of violence in the future. The
12 burden is not that high. They could have gone very low and
13 said, State, all you have to show is there's a chance or mere
14 possibility that the defendant would commit criminal acts of
15 violence. They obviously didn't do that.

16 So would you agree with me that if you look at that
17 and take it on its face, probability does not mean a chance
18 or probability, does it?

19 A. I agree with you that probability doesn't mean a
20 chance. It means a probability that it will happen again.

21 Q. Criminal acts of violence. Most people tell me that
22 involves other people either actually being harmed in some
23 way or being threatened with harm. That's different than
24 just a property crime. If I go out and jimmy the door on an
25 automobile today and steal a radio when no one is around,

1 most people see a distinction.

2 Do you also see that kind of distinction?

3 A. Yes, I do.

4 Q. Finally, the word "society." That means everyone.
5 It means people like you and I that live in the free world,
6 but if you'll remember, Judge Entz has already told you a
7 capital life sentence means a 40-year period before you
8 become eligible for parole.

9 So can you see how prison can also be part of
10 society?

11 A. I hadn't thought about it --

12 Q. Uh-huh.

13 A. -- but I presume that it could be a part of society,
14 yes.

15 Q. If you think of society as being anywhere the
16 defendant may find himself to be or anyone he may come in
17 contact with, can you see how both prison and the free world
18 could be part of society?

19 A. I believe it's a part of society. I think it's a
20 different kind of part of society. Obviously, the freedoms
21 you have in the non-prison society are quite a bit different
22 than prison.

23 Q. I like to ask, do you think that people in a prison
24 should be free from violence? And we're talking even inmates
25 who are serving felony time or guards or secretaries or

1 nurses? Do you think they have the right to be safe, too?

2 A. I think they have the right to be safe.

3 Q. Ms. Morton, I've heard it argued sometimes that
4 society should really mean only prison. You're entitled to
5 do that if you want to. Have you heard about the Connally 7,
6 the inmates that escaped from the South Texas prison and came
7 up and murdered the Irving police officer?

8 A. I heard about that, and I don't know what the
9 disposition of that was, so I'll -- I presume that -- that
10 was just recent so I don't know if they've been -- whoever
11 was finally caught was proven innocent or guilty or --

12 Q. Right.

13 A. I've heard of that --

14 Q. Right.

15 A. -- incident, obviously.

16 Q. They haven't come to trial yet. They're going to
17 start up this summer sometime. But the point being some of
18 those individuals who were actually serving life sentences at
19 the time that they escaped to come up here to commit that
20 capital murder.

21 Any questions on Special Issue Number 1, Ms. Morton?

22 A. No.

23 Q. Feel like you understand what the burden of proof is
24 on that case -- on this special issue?

25 A. I believe so.

1 Q. Let's look at Special Issue Number 2 for a little
2 bit. When you think of the word "sufficient mitigating
3 circumstances," does anything come to mind when you hear that
4 phrase?

5 A. Unfortunately, I really can't define it. I can't
6 imagine what circumstance that I would need to hear in order
7 for that to happen, so --

8 Q. Uh-huh.

9 A. I'm sorry, I can't think of anything.

10 Q. Here's the good news. You don't have to be able to
11 think of one on your own right now.

12 A. Thank God.

13 Q. I would hope that you don't sit around your home
14 thinking about mitigating circumstances and the death penalty
15 that much.

16 Let me just go through some things that jurors have
17 mentioned in the past and get your reaction to those. Okay?
18 Some jurors have told me that age might be a mitigating
19 circumstance, some jurors thinking that a younger person is
20 more capable of being rehabilitated than an older person.
21 I've had just as many people on the other hand tell me that
22 age is not mitigating in their mind because as long as a
23 person is old enough to know what they're doing, to know the
24 consequences of their actions, that that's enough for them.
25 I can tell you in the State of Texas you have to be at least

1 17 years of age before we can seek the death penalty against
2 you.

3 What are your general feelings about age?

4 A. In relationship to age for a very young defendant,
5 and I would say that it would be under the age of 17, I think
6 there might be mitigating circumstances, because I'm not sure
7 a person that young would be able to determine the outcome of
8 their actions.

9 Q. Okay. We're talking --

10 A. Once we reach 17, I don't think there's really any
11 difference between 17, 20, 50, 60, age wise.

12 Q. Fair enough. Alcohol and drug use. Some people say
13 that that might be mitigating. Some people have told me they
14 think it's a disease process, that someone can't help
15 themselves. Other people say, now, that's a conscious
16 decision. I've had other people kind of come down the middle
17 and say they'd like to hear all the facts, because perhaps
18 you have someone is not experienced with those items,
19 maybe -- let's take myself. Let's say that I've never had a
20 drink or never taken drugs before. I don't know how those
21 substances would act within me, as opposed to maybe I've been
22 a long-term user. Maybe I've abused them in the past. Maybe
23 I've even told people that I know exactly how I act when I
24 get drunk or I get high.

25 What are your general feelings there?

1 A. I -- I would think that if a person had never taken
2 any controlled substance of any kind, that they would not
3 know perhaps how they would react. I think that if they use
4 alcohol or drug use of some kind for an extended period of
5 time and there are periods of time when they are not under
6 the influence --

7 Q. Uh-huh.

8 A. -- that in fact based upon the consequences of
9 whatever actions they've taken, they should be able to judge
10 how they act while under the influence of either one of those
11 two.

12 Q. All right. Some people tell me they'd like to look
13 at the person's upbringing. Specifically some people say if
14 there's evidence that person has been sexually abused,
15 physically abused in some way, I'd like to know that.

16 What are your feelings about those types of issues?

17 A. Obviously, if I were on a jury making this decision,
18 I would want to know everything I could about the individual.

19 Q. Uh-huh.

20 A. And -- and their upbringing and any mitigating
21 circumstances that would result from that or result in that.

22 Q. See, one of your duties as a juror is going to be
23 determine what the facts are in this case. You get to listen
24 to the witnesses. You get to determine if you believe them
25 or not. That might be true of the issue of abuse. Let's say

1 that issue were raised in this case. Claim that an
2 individual had been sexually abused or physically abused as a
3 child. You'd have to listen to that evidence. Determine if
4 you thought the abuse even occurred. You might conclude
5 after you heard all the evidence that you didn't believe the
6 claim. Some people have told me with that regard that maybe
7 they'd like to know just when did it supposedly occur. When
8 is the first time that person actually made an outcry that
9 he'd been abused. Who did he tell. Did he tell consistent
10 or inconsistent stories. Was there some motivation for his
11 story. For instance, was he under legal indictment the first
12 time that he started making these claims.

13 Are those the types of things that you might also
14 like to know about, if you have to judge the validity of an
15 abuse claim?

16 A. I would want to know all of that. I would hope that
17 I would also have expert opinion, based upon whatever
18 circumstances there were, in order to help me formulate some
19 kind of opinion because I'm not an expert on anything of that
20 nature.

21 Q. Maybe for instance a doctor who had examined the
22 person looking for signs of abuse?

23 A. Absolutely.

24 Q. Finally, some jurors tell me about remorse again.
25 That the person's actually expressed sorrow for what he's

1 done, if it's genuine. I've had some people tell me that's
2 something they may want to take into account. I've had other
3 people say that's too bad, you know, whatever you've done
4 later is -- that's really not relevant.

5 What are your feelings about that?

6 A. Obviously, I would listen to that and consider it as
7 a factor and -- it would be one of the other factors that I
8 would be asked to consider.

9 Q. You know, with regards to Special Issue Number 1 and
10 Number 2, sometimes jurors tell me they may want to look at
11 how that person -- the defendant has been acting in the
12 county jail awaiting trial. Obviously, if he's been acting
13 well, perhaps that might be used in his favor on Special
14 Issue Number 1 or Number 2.

15 Just using your common sense for a moment, Ms.
16 Morton, how do you think an individual would probably act in
17 the Dallas County Jail awaiting trial for capital murder
18 knowing that his behavior could be used for or against him in
19 Special Issues 1 and 2?

20 A. Well, I think it would behoove anyone that was in a
21 situation to behave in whatever manner that they thought
22 appropriate and -- if they could in order to -- to have the
23 end result as being beneficial to that person of whatever
24 crime they were accused of.

25 Q. Ms. Morton, I know that you had indicated in your

1 questionnaire that you had sat on a jury before, a drug case;
2 is that right?

3 A. Yes, I had. It was a sentencing jury.

4 Q. All right. So had the defendant entered a plea of
5 guilty then, and then you were asked as a jury to sentence
6 him?

7 A. Either the person entered a guilty plea or was found
8 guilty by -- in a different jury setting. I simply was on
9 the sentencing, and I don't remember frankly.

10 Q. Okay. I think you indicated that the sentence you
11 thought was a 25-year sentence; is that right?

12 A. I believe so. I just don't remember. It was
13 several -- four, five years ago or so.

14 Q. Was there anything about your service on that case
15 that you think would affect your ability to sit on this type
16 of case?

17 A. Not that I know of.

18 Q. All right. Let me talk to you for a little bit
19 about -- about some of the -- some of the general principles
20 in this -- this type of case. First of all, the defendant's
21 presumed to be innocent as he sits here right now. You have
22 to presume him not guilty of this offense. The State hasn't
23 proven his guilt beyond a reasonable doubt.

24 Can you assure all us that you will not find this
25 man guilty until the State of Texas proves his guilt beyond a

1 reasonable doubt? Can you do that?

2 A. That's absolutely correct, yes.

3 Q. The law would also say if he chooses not to testify
4 in this case, that fact cannot be held against him. Everyone
5 has a right to remain silent.

6 Do you feel in this case if he does not testify that
7 you can go back to the juror room and not consider that for
8 any reason? Could you do that, too?

9 A. I believe so.

10 Q. Okay. You know, some people have said in the past
11 that they're just not sure about that, that they would want
12 to testify themselves if they were on trial. Some people
13 have said, I would be wondering about why he didn't testify.
14 That may be normal or a natural reaction, but the Judge will
15 instruct you, you simply cannot consider that.

16 Can you put that out of your mind?

17 A. I believe so.

18 Q. Another issue that sometimes comes up in a case like
19 this deals with written statements, confessions given by
20 defendants. And, you know, the law, if you watch these TV
21 shows is that certain warnings have to be given to the
22 suspect before the statement can be taken. Let's say that
23 you a case, a capital murder case where a person -- let's say
24 myself, went out and I fire bombed a child care center. And
25 I killed a hundred children in there. I intended to kill

1 them, too. I did all of that. No one saw me. I got away
2 scot-free. Somehow two or three days later I come in contact
3 with a police officer. I get to talking. I decide I'll just
4 tell him all I know because I'm happy and I'm proud of what I
5 did. He takes me down. He sits me down with the detective,
6 and the detective for whatever reason gives me three out of
7 the four necessary warnings. Maybe he forgot to tell me that
8 I had a right to remain silent. He didn't have to tell me.
9 I wasn't going to listen anyway. I wanted to give a
10 statement. I was in a mood to talk. Anyway, he takes the
11 statement from me. I'm arrested, charged, indicted for
12 capital murder. I come to trial. Detective gets up there on
13 the witness stand and during his testimony says, honestly, I
14 did not give him that last warning. I got in a hurry that
15 day. I did not tell him he had a right to remain silent, and
16 that's my fault.

17 The law in that type of case would be this, unless
18 all of those warnings are given, you can't consider the
19 statement. In my case there are no other eyewitnesses.
20 There's no other evidence of my guilt. All you have is my
21 statement. From the details in that statement, you know it's
22 true. You know that I did it. Maybe even in that statement
23 I said I'm proud of what I did and the first moment I get a
24 chance, I'm going to do it again, so watch out. You go back
25 there to the jury room. The other 11 people say, you know,

1 we've got a very dangerous man on our hands here. He's a
2 child killer. He's going to do it again. There's no way
3 that we're going to let this guy go free. The law again
4 would be warnings were not given, the statement has to be
5 tossed aside. You've got to look at the remaining evidence,
6 Ms. Morton, and there is no other legally admissible evidence
7 available. The law would require you to find me not guilty,
8 knowing that I'm going to walk right out of that courtroom
9 and I can never be tried for that offense again.

10 Some people frankly have said they can do it. I've
11 had other people tell me that that just violates their
12 conscience to the degree that there is no way they would want
13 to take part in a process where they let a dangerous man go
14 back out on the street to harm children.

15 What do you do in that situation?

16 A. To follow the law.

17 Q. Okay. Might be difficult, right?

18 A. You bet.

19 Q. Okay. That's the real key down here. A lot of
20 times we have things that are difficult to do. And we ask
21 jurors, if necessary, to put aside their feelings and do just
22 that.

23 Let me talk to you about the offense of murder for a
24 moment. Murder by itself is not a capital offense. If I
25 intentionally kill another person, maybe someone sitting in

1 the jury box, I don't like their tie, I shoot them ten times,
2 I laugh about it, brag about it. As bad as that may be,
3 that's an intentional murder, but it's not a capital murder
4 because there is not something else to go along with that.
5 There's not a robbery or kidnapping or something like that.

6 The law says that I can get anywhere between 5 years
7 up to 99 years or life in the penitentiary, but I can't get
8 death. To be a qualified juror, you have to have an open
9 mind to the full range of punishment. And we're talking
10 about an intentional murder here. We're not talking about
11 self-defense. I'm not talking about insanity. I'm not
12 talking about an accident or negligence. I'm talking about
13 an intentional murder where I intend that someone is going to
14 die and then I do everything necessary to take their life.
15 That's an intentional murder.

16 I've had some people tell me, no problem with the
17 maximum, I can give life for that kind of murder, intentional
18 murder. But I've had some people tell me they're not sure
19 they could ever give anything as low as 5 years, that just
20 seems like it's just too little for an intentional murder,
21 life is worth too much.

22 Do you feel like an intentional murder case, Ms.
23 Morton, that you could give something as little as 5 years,
24 or do you think that you would set a higher minimum for that
25 type of killing?

1 A. I personally think a higher minimum would be
2 appropriate.

3 Q. Okay. Now, here is the key, I guess. It would be
4 this. You know, the law is going to ask you to try to remain
5 open-minded about it. The law would ask you if you heard a
6 case, an intentional murder case, that you be able to set a
7 5-year sentence if you thought it was proper. I guess -- I
8 guess the problem comes in that some people tell me, oh, I
9 can do that, but the trouble is if you show me an intentional
10 murder, because of the way I feel about the taking of human
11 life, there's not going to be a case where I think 5 years is
12 a proper sentence.

13 Is that what you're telling me, or are you telling
14 me something different?

15 A. Well, unless I heard all the facts of any case, I'm
16 not -- I can't tell you that -- that I would choose one
17 number of years over another number of years.

18 Q. Uh-huh.

19 A. If the range were 5 to 99, I presume I would look at
20 whatever the circumstances were and determine whether I could
21 set a 5-year sentence for whatever this kind of murder was.

22 THE COURT: Is your mind not closed to the
23 minimum of 5 years?

24 VENIREPERSON: No, it's not closed. Given the
25 example --

1 Q. (By Mr. Davis) Yeah, I didn't mean to say that was
2 the only case, because there may be a lot of other -- oh, in
3 that case there, you may think I ought to get life for just
4 senselessly killing a stranger. And what I was trying to say
5 to you is that the law asks you when you look at an
6 intentional -- and there are a lot of things that could be
7 intentional. I mean, besides, that's kind of an extreme
8 case. But I hear you saying you'll look at all the facts,
9 and if the facts tell you that it ought to be a 5-year case,
10 then that's exactly what you're going to do; is that correct?

11 A. That's correct.

12 Q. Fair enough. Ms. Morton, just kind of going through
13 your questionnaire here, are there any things that maybe
14 you've thought about since you answered the questionnaire
15 that you think we need to talk about this afternoon?

16 A. Well, I think it's the very last question on the
17 form.

18 Q. All right. What would that question be?

19 A. And that would have been do you want to serve on
20 this jury.

21 Q. I believe you said you thought it was your duty to
22 live in this country, although you wouldn't relish it,
23 correct?

24 A. That's correct. And so the word is not want. The
25 word is will.

1 Q. Uh-huh --

2 A. Do I want to serve on this jury? No.

3 Q. Okay.

4 A. But I will --

5 THE COURT: Do you want to let me in on a
6 little secret?

7 VENIREPERSON: Yeah. Nobody probably wants
8 to.

9 THE COURT: Yeah, they do.

10 VENIREPERSON: Oh.

11 THE COURT: Those that want to serve on a
12 capital murder jury, we have reason to think they've got some
13 kind of agenda. Sometimes more likely than not hidden, but
14 if you had said, boy, I want to be one of the 12, sign me up,
15 I'll be -- start tomorrow morning, huh-uh, huh-uh.

16 VENIREPERSON: Well, that's the huh-uh for me.

17 THE COURT: Those people scare us.

18 Q. (By Mr. Davis) Yeah, I just tell you, if you had
19 told us that you wanted to be on the jury, I would probably
20 spend my entire 30 minutes trying to find a way to take you
21 off the jury and so would Mr. Byck or Ms. Balido. That's the
22 honest truth.

23 THE COURT: That's right.

24 Q. (By Mr. Davis) I mean, we really do look for people
25 who say it's not what I choose to do, but I understand my

1 civic duty and I'm not going to shirk my duty. That's kind
2 of what you're saying.

3 A. That's exactly what I'm saying.

4 Q. Let me just ask you, I always like to look at the
5 people that are most respected and least respected. And you
6 had a couple of interesting pairings I thought. You had
7 Barbara Jordan and Nancy Reagan as people -- as the women
8 that you most respected. What are the qualities about those
9 two women? They seem a bit different on the face of things.

10 A. Well, actually I think they're both courageous in --
11 perhaps Nancy Reagan more courageous at the end of her public
12 life than during the entire stint. Certainly supporting a
13 husband and keeping his dignity, I think it's very
14 admirable. So, and I really couldn't think of names that
15 everyone knew frankly.

16 Q. Well, the two men that you least respect I think
17 we've all heard of those, Rush Limbaugh and Jerry Springer.
18 That's quite a grouping there.

19 A. Well, I think they prey upon the marketability of
20 dissent and division.

21 Q. Just final couple of questions here. I want to tell
22 you that I want Jedidiah Murphy to receive a fair trial. I'm
23 very serious about that. That's why we go over these
24 principles with you. When we leave this courtroom on the
25 final day, Ms. Morton, I want all of us to be able to walk

1 out of here knowing that the rules were followed. We're
2 fortunate that Judge Entz is hearing this case. I've tried a
3 death penalty case with him before. The rules will be
4 followed here.

5 Do you feel like you can give Jedidiah Murphy a fair
6 trial?

7 A. If I were selected, I would try to do my best to
8 do -- to follow whatever the rules are, to follow the law.

9 Q. Note -- I know you said you thought you had heard a
10 newscast about this case; is that right?

11 A. Yes.

12 Q. And I know that both sides are probably interested
13 in this. Let me just ask you. Do you remember what you
14 heard about this case?

15 A. I'll tell you what I can remember. I believe this
16 was an elderly lady who was missing and her daughter or
17 granddaughter appeared on television -- I think it was this
18 case, wondering where she was, and I believe she was found
19 dead in a car.

20 Q. Uh-huh.

21 A. That's -- that's what I think I remember hearing,
22 but that's it.

23 Q. Did you form any opinions at all about the case as a
24 result of what you heard?

25 A. No.

1 Q. Okay. So can we be assured that when you listen to
2 this case, you're really going to be hearing the facts for
3 the first time if you're on this jury, correct?

4 A. I believe so, for the most part.

5 Q. Okay. And I guess the key question is, have you
6 formed any opinion about the guilt or innocence of Jedidiah
7 Murphy based on what you've heard?

8 A. Actually I have no idea if he was ever involved. I
9 haven't heard anything. In fact, the only -- I don't even
10 remember the lady's name, so you've said it several times so
11 I presume that's the right news report.

12 Q. It's Bertie Cunningham is her name. Right.

13 Final question is this, can you be fair to the State
14 of Texas because, you know, obviously the State of Texas and
15 the victims in this case are looking for justice also. If
16 you were sitting where I'm sitting today looking at yourself,
17 would you have any hesitation about your ability to be fair
18 to both sides in this case, including the State?

19 A. I guess if I were the State, what I would want to
20 know about me is that -- that in order to consider Special
21 Issue 1 and Number 2, that you would have to prove to me that
22 we have gone through and I've answered those questions to I
23 presume the positive.

24 Q. Ms. Morton, I appreciate your time. I appreciate
25 your candor with us this afternoon. Thank you.

1 MR. DAVIS: Pass the venireperson.

2 THE COURT: Need a break before the defense
3 begins their questioning? Need a stretch break or rest room
4 break, or you want to continue?

5 VENIREPERSON: I'd love some water.

6 THE COURT: You will have it --

7 VENIREPERSON: -- so just five minutes would
8 be fine.

9 THE COURT: -- momentarily.

10 VENIREPERSON: Okay.

11 THE COURT: Ready?

12 VENIREPERSON: Ready.

13 THE COURT: Ms. Balido.

14 MS. BALIDO: May it please the Court.

15 Cross-Examination

16 By Ms. Balido:

17 Q. Ms. Morton, my name is Jennifer Balido. And along
18 with Mr. Byck, we represent the defendant in this case,
19 Jedidiah Isaac Murphy. Our other co-counsel, Ms. Little, is
20 off with our investigator working on some things involved in
21 this case.

22 And so what I'm going to do is I'm going to ask you
23 some questions in regard to your questionnaire and then also
24 ask you some questions about what you discussed with Mr.
25 Davis. If you don't understand anything -- or sometimes I

1 tend to over talk and make things more complicated than they
2 are, if I do that, please just stop me and we'll try to
3 communicate as well as we can.

4 Let me start off by saying, Ms. Morton, that you
5 being here and the way that you've answered the questions and
6 talking about how you're going to be open-minded and look at
7 all the facts in this case, you are probably dangerously
8 close to being on this jury. I don't want to say that to
9 scare you or to change your answers.

10 A. Well, you did. You scared me, so --

11 Q. But it's important to know about that and to kind of
12 know where you are in the process just -- just in case there
13 is anything that comes to your mind that would cause you not
14 to believe that you could be fair and impartial in this case.

15 And let me just start off by talking a little bit
16 about the two options that are available for punishment in
17 this case. Because it kind of brings up something that you
18 talked about on your questionnaire. It used to be in Texas
19 that the Judge was not allowed and the parties were not
20 allowed to discuss with a juror what, quote, a life sentence
21 meant. And people would hear horror stories all the time in
22 the news or just by word of mouth that a life sentence could
23 be, you know, 20 years, it could be 10 years, it could be 5
24 years. You know, no one really knew what a life sentence
25 meant. So it placed the jurors in death penalty cases kind

1 of in a -- a quandary because their choice in the case was
2 either death by lethal injection, which I think does not need
3 a definition of what that means, or life imprisonment. And
4 we can't tell what you that means. And so you're just kind
5 of left to your own imagination what that means. But
6 thankfully since the courts wouldn't do it, the legislature
7 stepped in and said that the jurors will be told that in a
8 capital murder case where life confinement is the punishment,
9 then life confinement will mean 40 calendar years before the
10 convicted person is eligible for parole and that's just
11 eligible. I mean, that doesn't mean that he's going to get
12 it, but that just means 40 calendar years day-for-day and --
13 until he's eligible for parole.

14 A. Uh-huh.

15 Q. And you mentioned on your questionnaire that one of
16 the biggest problems with the criminal justice system is a
17 juror does not know that the sentence often doesn't reflect
18 the actual time served or will be served. So I guess my
19 question is to you, when we're talking about capital murder
20 and we're talking about the intentional killing of somebody
21 in the course of committing another offense, in this case
22 robbery or kidnapping, do you think both death by lethal
23 injection and life confinement in prison which means 40
24 calendar years are both appropriate or adequate punishments
25 for that type of crime?

1 A. I believe they are the legal definition of the --
2 the types of punishment I presume if a person is found
3 guilty, so the minimum is 40 years and the maximum is the
4 lethal injection.

5 Q. Okay.

6 A. If that's what your saying.

7 Q. Yes --

8 A. And it would depend on any mitigating circumstances
9 whether the range of that would be appropriate up to and
10 including a lethal injection.

11 Q. Okay. So basically you can see that in some cases
12 lethal injection might be the proper punishment and in some
13 cases life confinement might be the proper punishment?

14 A. Yes.

15 Q. Depending upon the facts?

16 A. Yes.

17 Q. Let me go ahead and just talk to you a little bit
18 about -- and focus on a little bit of the guilt/innocence
19 part of this trial. And Mr. Davis didn't talk very much
20 about the burden of proof in this case. And the burden of
21 proof in all criminal cases is the State must prove its case,
22 each and every element of its case, beyond a reasonable
23 doubt. And now we've -- you -- we used to have a definition
24 of what beyond a reasonable doubt meant, but now we don't
25 have one anymore. And so basically a reasonable doubt is

1 something that may be different to every single person
2 sitting in the jury box. But I can tell you what beyond a
3 reasonable doubt is not end of the law.

4 When people are fighting about money and they're
5 over in the civil courthouse and they're suing each other
6 about money, that -- the party bringing the lawsuit must
7 prove their case by a preponderance of the evidence. And the
8 law says that's basically about 51 percent. Okay. More
9 likely than not is what we talk about. When the State of
10 Texas through their Child Welfare Section of the Juvenile
11 Department is trying to take your children away from you for
12 whatever reason, they must prove their case by clear and
13 convincing evidence, which is more than 51 percent.
14 Sometimes people say it's about 75 percent. But when someone
15 is trying to take your liberty and in this case the State of
16 Texas is trying to take the life away from Mr. Murphy, they
17 must prove their case beyond a reasonable doubt which is
18 basically, you know, we don't ask you to place your common
19 sense outside the jury deliberation room. So it's basically
20 proving to you beyond a reasonable doubt that the case is --
21 that they've proven their case. And it all kind of ties into
22 the presumption of innocence as well, because the defense
23 (sic) is presumed innocent unless and until the State can
24 prove each and every element of its case beyond a reasonable
25 doubt. And that becomes important because there are times --

1 sometimes and it's happened in cases that I tried both as a
2 prosecutor and as a defense lawyer where the State of Texas
3 has proved its case on every element except for one. Now,
4 just as a -- as a kind of outrageous example -- well, I don't
5 know if it's outrageous, but it does happen sometimes. If
6 the State proves its case beyond a reasonable doubt, proves
7 every single element of the indictment, except doesn't prove
8 that it happened in Dallas County, Texas, then the Judge will
9 instruct you if you have a reasonable doubt of the element of
10 the offense, you're supposed to find him not guilty. And
11 sometimes that kind of gets caught in people's throat, these
12 sort of technicalities.

13 How do you feel about that sort of thing?

14 A. I have one question.

15 Q. Sure.

16 A. We were talking about the -- not a reasonable doubt,
17 but preponderance of the evidence and --

18 Q. Right.

19 A. -- you were talking about a verdict of lethal
20 injection and the -- the verdict is first guilty and not
21 guilty, right?

22 Q. Right.

23 A. And then -- then you weigh lethal injection after in
24 fact there is a guilty verdict?

25 Q. Yes, that's correct.

1 A. So the guilty verdict is based upon the
2 preponderance of evidence.

3 THE COURT: Beyond -- no, beyond a reasonable
4 doubt.

5 Q. (By Ms Balido) Beyond a reasonable doubt.

6 A. Beyond a reasonable doubt.

7 Q. Right.

8 A. Okay. Well, then I understand that part of it.

9 Q. Okay.

10 A. Okay.

11 THE COURT: If I were suing you for -- we had
12 an automobile accident and I thought that you had -- you were
13 at fault, so I decided I'm going to sue you. Our insurance
14 company is going to get together so I'm going to sue you.
15 Before I could prevail, before you could be required to pay
16 me, I would have to prove by a preponderance of the evidence
17 that you had caused the accident.

18 VENIREPERSON: And --

19 THE COURT: Not beyond a reasonable doubt --

20 VENIREPERSON: Right.

21 THE COURT: -- but just the greater weight of
22 the believable evidence. If I failed to do that, if it was
23 an unavoidable accident or both of us were equally guilty,
24 boom, I lose. I lose.

25 VENIREPERSON: Right.

1 THE COURT: But if I had more of the
2 believable evidence than you, I win. You have more of the
3 believable evidence, then I -- you win. Not so in a criminal
4 case. Higher standard. Not a mathematical standard. Not
5 the Perry Mason beyond a shadow of a doubt. Not a hundred
6 percent certainty, because guess what? If you were a hundred
7 percent certain, you would be on the witness list, not as a
8 prospective fair and impartial juror deciding --

9 VENIREPERSON: Right.

10 THE COURT: -- the case.

11 VENIREPERSON: Well, I guess what I was trying
12 to say is I understand that.

13 Q. (By Ms. Balido) Okay.

14 A. And I believe I would understand the definition of
15 what -- what I would need to determine to either find guilty
16 or not guilty, number one. Number two, I don't like
17 technicalities. I don't like that.

18 Q. Uh-huh.

19 A. But I'm a technical person. And if in fact the law
20 said that someone had to be indicted in the county of --
21 where either the crime or the victim lived or whatever --

22 Q. Uh-huh?

23 A. -- and that wasn't the case, then it's the law.
24 It's not the case. So whether or not I like something or I
25 like technicalities probably doesn't make any difference.

1 Q. Okay. And so you're saying you could follow the
2 law, and if the Judge instructed you if they didn't prove
3 their case, then find him not guilty even if it was on a
4 technicality?

5 A. Yes.

6 Q. Going kind of along with that, if you'll take a look
7 at the indictment that's sitting in front of you, Mr. Murphy
8 is being charged with capital murder and there's a lot of --
9 by the name and the authority of the State of Texas at the
10 very top, but what I'm getting to is kind of down in the meat
11 of the indictment.

12 (Venireperson reads indictment.)

13 A. Okay.

14 Q. (By Ms. Balido) What I'm going to focus on
15 specifically at this point is what we call the mental state
16 which is in this case intentionally. He's accused of
17 intentionally causing the death of Ms. Cunningham.

18 Now, under the law there are many different ways
19 that a homicide can take place, causing the death of someone
20 can take place. It can either be through criminal negligence
21 where somebody should have appreciated the risk but didn't.
22 There can be also by accident and that sort of thing.
23 Knowingly can also be a mental state where someone might know
24 that what they were doing was wrong and can hurt somebody,
25 but did it anyway.

1 And what we're talking about here is we're talking
2 about the specific intent to kill someone, intentionally
3 cause the death of someone. And that is the type of mental
4 state the State has to prove beyond a reasonable doubt that
5 Mr. Murphy had before you can find him guilty of this
6 offense.

7 Let me just kind of give you an example. Say I'm
8 tired of Mr. Byck bothering me and writing notes to me all
9 the time. He's just driving me crazy. So I go out and I buy
10 a gun, and I buy bullets at a different store. I sneak it in
11 downstairs, and that's not too hard to do in this building.
12 And I get in here and he just pushes me to the edge just one
13 too many times by writing me a note and it's driving me, as I
14 said, crazy. And I pull out my gun, and I point it at him.
15 At that time I don't intend to scare him. I don't intend to
16 threaten him with that gun. I don't intend to injure him
17 with that gun, but I pull the trigger, you know, straight in
18 the head, and I intentionally cause his death. That's the
19 type of specific intent to kill that we're talking about in
20 this case, that the State must prove beyond a reasonable
21 doubt.

22 I guess -- do you understand that?

23 A. I understand that.

24 Q. Okay. Now, let me talk to you a little bit about
25 kind of getting over to the special issues, but before we get

1 there I just need to kind of approach something with you. On
2 your questionnaire you mentioned that the best argument in
3 opposition of the death penalty is that the murder was
4 unplanned and/or unintentional. Okay. And I want to talk to
5 you a little bit more about intent.

6 Before we can get the Special Issue Number 1 or
7 Number 2, the State has got to prove to you that it wasn't an
8 accident, that it wasn't a mistake, that it was a specific
9 intentional crime and the specific intent to kill. So I
10 guess my question is, if they prove that to you, that it was
11 an intentional killing, is someone automatically going to get
12 the death penalty?

13 A. No.

14 Q. Okay. I was just asking because of what you said on
15 your questionnaire.

16 A. Okay.

17 Q. Okay. And let me go on and ask you a little bit
18 more, talking specifically about that indictment. Before you
19 can get to Special Issue Number 1, which is whether there is
20 a probability that the defendant would commit criminal acts
21 of violence that would constitute a continuing threat to
22 society, you have already found him guilty on that
23 indictment, that he intentionally caused the death of Bertie
24 Cunningham in the course of either a kidnapping or a robbery
25 and either did it by drowning her in water or shooting her in

1 the head. So that's what type of case we're talking about.

2 Now some people tell us all the time that, you know,
3 if we're talking about that sort of case, I get to Special
4 Issue Number 1, you bet we're talking about an intentional
5 killing in the course of robbery or kidnapping, you know,
6 he's going to be a continuing threat to society. And other
7 people say, no, you know, I'd have to see more, I'd want to
8 know more before I could answer that question either yes or
9 no.

10 What's your opinion about that?

11 A. I would have to know more.

12 Q. Okay.

13 A. I'm -- I'm a pretty logical person.

14 Q. Okay.

15 A. I -- first of all --

16 Q. You said you're a very technical person also?

17 A. Yeah. I would have to -- it's my understanding that
18 the first step is guilty or not guilty.

19 Q. Uh-huh.

20 A. And then if there's a guilty verdict, that you move
21 to Special Issue Number 1 and Special Issue -- and then if
22 Special Issue Number 1 is answered in one manner, then you
23 move to Special Issue Number 2.

24 Q. Right.

25 A. Seems pretty straightforward to me.

1 Q. Okay. And so you see that there are different steps
2 involved. Some people don't get it, and some lawyers don't
3 get it.

4 A. I understand.

5 Q. People that do this all the time. So you seem to
6 have a very clear understanding of what's required.

7 Now, on Special Issue Number 1 just as the State had
8 the burden of proof on guilt/innocence, Special Issue Number
9 1, the State as has the burden of proof on that as well. And
10 that again is beyond a reasonable doubt. They must prove to
11 you beyond a reasonable doubt whether there is a probability,
12 that there is a probability. Okay? So sometimes people get
13 caught up thinking, well, they just have to prove
14 probability. And that's true. But they have to prove it
15 beyond a reasonable doubt. So that's -- that's their burden
16 of proof in that question.

17 Are we kind of clear, or am I --

18 A. I understand.

19 Q. Okay.

20 A. Beyond a reasonable doubt doesn't mean the amount of
21 probability which would be a hundred percent, but it would be
22 that the amount of reasonable doubt that there is a
23 probability and a high probability of that occurring.

24 Q. Okay.

25 A. That's as well as I can interpret it right now.

1 Q. Okay. And as you said, if you answered Special
2 Issue Number 1 no, then he gets the 40-year confinement and
3 that's the end of it. If the jury answers Special Issue
4 Number 1 yes, that's when we move to Special Issue Number 2.
5 And sometimes people have a problem with mitigation, with
6 what we're taking about mitigating circumstances and
7 mitigation, because a lot of times people think of it as an
8 excuse or a justification. But under the law if there was
9 any kind of legal excuse or legal justification, that would
10 have been dealt on guilt/innocence. You see, it would have
11 been a defense to the crime. But what we're basically
12 looking at here is we're looking at the personal moral
13 culpability of the defendant and whether or not there are any
14 factors that reduce that or even aggravate that if you think
15 so. And on that special issue there is no burden of proof.
16 That -- that evidence can come from anywhere in the testimony
17 or the evidence.

18 Let me ask you, basically do you think you're a
19 person that sees black and white, or are you a person that
20 sees various shades of grey?

21 A. I hate to tell you this, but sometimes I think an
22 issue is black and white and then I think in shades of grey,
23 also.

24 Q. Okay.

25 A. So I can't tell you that in any one instance I would

1 think in either way.

2 Q. Okay. Do you think that there is a difference
3 between someone who is a bad person and someone who is a good
4 person that does bad things sometimes?

5 A. I think it's pretty hard to be a good person and to
6 do bad things a lot of times.

7 Q. Okay. Is that another one of those shades of grey,
8 you have to hear everything and --

9 THE COURT: Kind of eliminates the definition
10 of being a good person, doesn't it?

11 VENIREPERSON: Yeah, that's what I'm
12 thinking. I mean, if you're a bad person, you probably do
13 some good things every now and then. But if you're a good
14 person, it doesn't seem to me that you would do bad things a
15 lot. Not that you wouldn't do a bad something, because I'm
16 sure I've done a bad thing or two that I wouldn't want -- you
17 know, I'm sorry, I did that. I really didn't mean it. Or it
18 was intentional, and I thought, gee, that was really
19 terrible.

20 Q. (By Ms Balido) Uh-huh.

21 A. But I think for the most part, if you're a good
22 person, you don't do bad things a lot of the times.

23 Q. Okay. Let me kind of give you an example that we
24 use when you're talking about mitigation and we're talking
25 about sufficient mitigating circumstances or circumstances to

1 warrant that the sentence of life imprisonment rather an
2 death sentence be imposed. Let's just take this example.

3 Suppose Mr. Byck and I are nonidentical twins. We
4 are both born of the same mother, who abused alcohol while
5 she was pregnant with us. When we were born, we were just
6 kind of too much to handle so she placed us for adoption.
7 And we were adopted by two separate families. Mr. Byck was
8 adopted by a family where love was a word that was spoken in
9 the family and love was shown throughout the family. He was
10 read to when he was a child. Whatever issues there was from
11 the fetal alcohol syndrome were addressed by doctors or
12 therapists as need be. He went to good schools with good
13 teachers, found a couple of those teachers that really make a
14 difference. Whatever issues he had growing up were resolved
15 or he was counseled with them. There was no abuse in the
16 family, either physical or verbal or that sort of thing. And
17 he went to a good college and graduated from college.

18 I, on the other hand, was not so lucky. I was
19 placed in a home where I never felt love, never was given the
20 ability to give love. There was violence on TV all the time
21 at our house. Violence inside the home both by the parents
22 and the other siblings. Never got to -- got to address my
23 issues about fetal issue alcohol syndrome. It was never
24 diagnosed, never had an issue. Went to good schools, but
25 never really quite caught that one teacher that might could

1 make a difference in my life. Kind of rambled through
2 school, graduated, and did kind of little else. And was --
3 throughout my life was physically abused or -- and/or
4 sexually abused.

5 As this example goes, Mr. Byck and I end up on
6 opposite corners in downtown Dallas robbing two separate
7 banks at the same time unbeknownst to each other. We both
8 did the exact same thing. We walk in with a gun, we demand
9 money, we get money, don't hurt anybody, but threaten a lot
10 of people. Walk out, immediately were arrested. And we are
11 both found guilty of aggravated robbery.

12 Do you think or do you not think that we should be
13 sentenced the same or punished the same?

14 A. I would probably say the punishment should be the
15 same for the same crime.

16 Q. Uh-huh.

17 A. Personally I have a tendency to believe that the
18 person who had the better advantage might -- might deserve a
19 stronger sentence.

20 Q. Okay.

21 A. Because of the advantages that they've had in life.

22 Q. Okay. Do you see how some of those things might be
23 kind of what Special Issue Number 2 is driving at when we're
24 talking about some of those situations may be mitigating,
25 some may be aggravating, that sort of thing?

1 A. Yeah, and I think the example certainly is an
2 extreme.

3 Q. Yes.

4 A. So it's like black and white.

5 Q. Yes.

6 A. I don't think there is a black and white. And even
7 though you're an identical twin, who you are personally
8 differs from whoever the other person is personally.

9 Q. Okay.

10 A. And the choices that that person makes are the
11 choices they make and need to be responsible for.

12 Q. Okay.

13 A. So, you know, the hypothetical is black and white,
14 and I don't think there necessarily is.

15 Q. Okay. All right. Let me just kind of close with
16 talking to you about this. There are -- well, we talk about
17 rights in this case. We talk about the defendant's rights.
18 We talk about the State's right to a fair trial. The
19 victim's rights. The Judge sometimes mentions that you're
20 not going to be subjected to any Rambo litigation tactics.
21 We're not going to embarrass you. So you as a juror also
22 have rights. And let me just kind of start this off by
23 saying or end this up by saying that each one of those chairs
24 over there in the jury box is separate. And as we talk about
25 the jury system or we talk about people that are going to be

1 on this jury, we talk about it as kind of one group. But
2 what it really is, is a situation of 12 individuals coming
3 together. And where that becomes important is when we're
4 talking about the burden of proof. And what may be
5 reasonable doubt to one person, may not be reasonable doubt
6 to another. And maybe everyone agrees that there's
7 reasonable doubt on the case, but those things -- you don't
8 agree as to the same piece of evidence that causes reasonable
9 doubt. But that's still reasonable doubt.

10 Additionally, when we get down to Special Issue
11 Number 2 and we're talking about mitigating circumstances,
12 you may think one thing is mitigating and your next door
13 juror may think something else is mitigating. But you all
14 agree that something in this case is mitigating enough to
15 give somebody a life sentence rather than a death sentence.
16 And that's kind of how the 12 come into it.

17 Once you're back in the jury deliberation room, you
18 know, we're talking about some heavy stuff here. We're
19 talking about life and death. We're talking about the death
20 of the victim already. And we're talking about whether or
21 not Mr. Murphy should live or die, you know, if we get to
22 that point on Special Issue Number 1 and Special Issue Number
23 2. So emotions can play a part of it. And there have been
24 situations in the past that some stronger jurors not --
25 certainly not saying you -- have either intimidated or

1 denigrated the process and the people back in the jury box to
2 such a degree that people don't feel like they can speak
3 freely or speak their mind or vote the way that they want
4 to. After talking to you, I don't think that's going to
5 happen with you, because I think you're a very strong
6 individual and I think that you can stand up for yourself.
7 But sometimes some other people are not as lucky in that
8 situation.

9 And I guess what I'm just asking is -- or telling
10 you is that you have the right and every juror has the right
11 to be heard and also to be able to speak freely about their
12 feelings of the case. And if that does happen or if that
13 does not happen and people are threatened or cajoled or hard
14 sales tactics are being used back there, you have the right
15 through your leadership to try to take care of that. But if
16 it kind of gets out of your hand, you also have the right to
17 contact the bailiff. And can you tell me that you can either
18 try to deal with it within the confines of the jury and if
19 that doesn't work, that you can come out and contact one of
20 the bailiffs, if necessary?

21 A. If I thought someone was being abused emotionally,
22 yeah, I -- I mean, if I thought something wrong was
23 happening, I would say something to someone.

24 Q. Okay.

25 A. Perhaps my biggest drawback to being on the jury is

1 that I'm opinionated and I will try to argue what I believe
2 is probable or mitigating or, you know, I would share my
3 views and I would try to strongly support whatever those
4 views were.

5 Q. They call the jury deliberation room a deliberation
6 room for a reason because that's exactly what needs to go
7 back there. But everyone has the right to be heard and
8 everyone has the right to do so in a very professional
9 manner.

10 A. That's right.

11 Q. Okay. I think I'm out of time and I'm out of
12 questions, so I appreciate your time. And thank you very
13 much for all your consideration in answering all the
14 questions in this case.

15 THE COURT: Ms. Morton, you may excuse
16 yourself in the company of the bailiff momentarily. The
17 attorneys will confer with their respective co-counsel.
18 Within a couple of minutes bring you back, let you know
19 whether you remain under consideration. You may go with Ms.
20 Madore.

21 (Venireperson excused from courtroom.)

22 THE COURT: Mr. Davis.

23 (State no challenge for cause - Ms. Morton)

24 MR. DAVIS: The State has no challenges for
25 cause.

1 THE COURT: Ms. Balido.

2 (Defense no challenge for cause - Ms. Morton)

3 MS. BALIDO: Defense has no challenges for
4 cause.

5 (Venireperson returned to courtroom.)

6 (Annette Morton Prospective Juror No. 26)

7 THE COURT: Ms. Morton, please have a seat.

8 THE COURT: What do you think? Do you think
9 you're under consideration, or do you think you're excused?

10 VENIREPERSON: I don't know. I tell you what
11 I hope.

12 THE COURT: Guess what? You're wrong. You
13 remain under consideration.

14 VENIREPERSON: Okay.

15 THE COURT: Ms. Morton, with your permission
16 I'm going to ask that you allow Ms. Madore to take a Polaroid
17 picture of you for the benefit of the attorneys.

18 VENIREPERSON: Sure.

19 THE COURT: We talk to an awful, awful lot of
20 people. Some remain under consideration, others like the
21 first lady today was excused based on some responses that she
22 gave us which were fine, but she is no longer under
23 consideration, but you are. So with your permission, I'm
24 going to ask you that you allow a picture to be taken of you.
25 Just as soon as the attorneys put their information with the

1 questionnaire, their notes, match that up, oh, I remember Ms.
2 Morton. Remember her coming down that Monday afternoon,
3 they'll be destroyed. So they're not going to made a part of
4 the trial record for any purpose.

5 VENIREPERSON: Okay.

6 THE COURT: May we have your permission to use
7 your Polaroid picture for that limited purpose?

8 VENIREPERSON: For the two attorneys, yes.

9 THE COURT: Let me ask Ms. Daily to come into
10 the courtroom. She'll be calling you, notifying you once we
11 reach this number of 48 and the attorneys exercise their
12 peremptory challenges whether you make the final cut as one
13 of the 12 jurors. If you should change phone numbers, work
14 or residence, before Ms. Daily calls you back, if you'd be
15 kind enough to call her so we can keep up with you.

16 Also, please avoid the temptation -- she'll confirm
17 the phone numbers before you leave.

18 VENIREPERSON: Okay.

19 THE COURT: Also, avoid the temptation of
20 contacting the Dallas Morning News with regard to back issues
21 that ran some stories dealing with the incident which forms
22 this prosecution.

23 VENIREPERSON: Haven't done that, and I won't
24 do it. I didn't even tell my husband which case this was,
25 because I don't want to talk about it.

1 THE COURT: Good. Ms. Daily, if you would
2 confirm the phone numbers with Ms. Morton, then you're
3 excused. Thank you very much.

4 VENIREPERSON: Thank you.

5 (Venireperson brought into courtroom.)

6 THE COURT: Good afternoon, Mr. Hiller, and
7 welcome back. Ask you to raise your right hand and again be
8 sworn in, please.

9 (Venireperson additionally sworn.)

10 THE COURT: Thank you. You may lower your
11 hand.

12 Mr. Hiller, let me reintroduce individuals whom you
13 see seated at the counsel table and one new member who wasn't
14 present with us when we had the large panel a week or so
15 ago.

16 Beginning with the table to the far left, lead
17 prosecutor for the State, the Honorable Greg Davis.

18 MR. DAVIS: Good afternoon.

19 VENIREPERSON: Hi.

20 THE COURT: One of the Senior Prosecutors in
21 the Dallas District Attorney office. He is assisted this
22 afternoon by a fellow Senior Prosecutor in the Dallas
23 District Attorneys Office, Mr. Toby Shook.

24 MR. SHOOK: Good afternoon.

25 VENIREPERSON: Hello.

1 THE COURT: He's substituting this afternoon
2 during this jury selection for the Chief Prosecutor assigned
3 to this court who has some maternal responsibilities with
4 regard to some children and some medical appointments that
5 were a conflict with her being with us this afternoon. You
6 might recall that when you were down here before, the counsel
7 assisting Mr. Davis was a young lady by the name of Ms. Mary
8 Miller.

9 Moving on to the defense table, we have the first
10 two individuals I'll be introducing are two of the three
11 defense attorneys. First is a board certified criminal law
12 special list, so designated by the State Bar, by virtue of
13 experience, training, and having passed a very difficult
14 examination, the Honorable Michael Byck.

15 MR. BYCK: Good afternoon, Mr. Hiller.

16 VENIREPERSON: Hi.

17 THE COURT: Seated next to him is a
18 co-counsel, the Honorable Jennifer Balido.

19 MS. BALIDO: Good afternoon.

20 VENIREPERSON: Hello.

21 THE COURT: There's a third attorney
22 representing the defendant who is working with the
23 investigator with regard to some evidentiary matters with
24 arrested to this case. I understand she will not be with us
25 this afternoon, but I introduce her in absentia by name only,

1 the Honorable Jane Little.

2 Seated next to Ms. Balido, opposite Mr. Byck, is the
3 accused, the defendant, if you will, Mr. Jedidiah Isaac
4 Murphy.

5 THE DEFENDANT: Good afternoon.

6 VENIREPERSON: Good afternoon.

7 THE COURT: Mr. Hiller, we will begin with the
8 State's presentation. Again, I emphasize to you as I did
9 with the panel when you were down here before, as is true
10 with the questionnaires, true with their questions to you
11 this afternoon, no right or wrong answers as long as they're
12 honest.

13 You will know before you leave us this afternoon
14 whether or not you remain in the pool from which ultimately
15 12 will be selected after the peremptory challenges have been
16 exercised that will serve as jurors in this case. Been
17 waiting patiently for us for a good little while. Are you
18 ready to go?

19 VENIREPERSON: Yes.

20 THE COURT: All right. We are as well. We
21 will proceed with Mr. Shook.

22 MR. SHOOK: Yes, Judge. Thank you.

23 SCOTT HILLER

24 was called as a venireperson by the Court and, after having
25 been first duly sworn, was questioned as follows:

Voir Dire Examination

By Mr. Shook:

Q. Mr. Hiller, again my name is Toby Shook, and I'll be asking you questions on behalf of the State of Texas this afternoon. And if you have any questions on anything I go over, feel free to ask the questions. Now is the appropriate time. We get half an hour each to talk with you. We like it to be kind of a give and take situation. We want you to feel comfortable and answer our questions whenever you have them, but we do need to give you a lot of information in a short amount or period of time so sometimes we get a little carried away, so feel free to stop us at any time you want to if something is not clear or if you want to clarify. And as the Judge said, we're just looking for your honest opinions on this.

A. Okay.

Q. You've taken the time to fill out a lengthy questionnaire. We appreciate that. That's given us a lot of information. And what I'll do is continue on with some of the information you've given us. Obviously, we're going to be concerned about how you feel about capital murder and the death penalty.

A. Uh-huh.

Q. And how do you feel about the laws and rules that apply to these types of cases. By your questionnaire, you've

1 put that you are in favor of the death penalty as a law and
2 feel it's appropriate in some circumstances. If you would in
3 your own words, tell me why you feel the death penalty is
4 appropriate or why you favor the death penalty as a law.

5 A. Well, I think that in certain points if somebody
6 makes a determination to go ahead and turn their back on
7 society and do so in such a way that inflicts suffering or
8 shows no mercy or is just cruel outside of any sort of laws
9 of decency or anything that comes out of the Bible or
10 anything that is just morally wrong at some point society has
11 to say that that is a -- something that can't be there.

12 Q. Okay. Would you, if it were up to you, reserve the
13 death penalty just for certain types of murder cases, or
14 would you enlarge it to other types of crimes?

15 A. I think that's hard to say. I think it all depends
16 on what the circumstance are.

17 Q. Okay.

18 A. Clearly the taking of another life is something that
19 starts biblically or, just, you know, whatever you are
20 brought up with between right and wrong. I don't know that I
21 could extend that without knowing the circumstances around
22 it.

23 Q. Okay. Would -- and let me ask you this, were you
24 brought up with the belief in the death penalty? Is it
25 something you were raised that that's a law that we should

1 have, or is that something that you developed later on as you
2 grew up?

3 A. It developed later on.

4 Q. Okay. What specifically caused you to feel that
5 way, if you know?

6 A. I don't recall what made me feel that way. I mean,
7 I remember there was a lot of discussion about it in college
8 and school and things like that when there were a lot of
9 people that were just so violently opposed against it, it
10 almost required you to think about why that might be.

11 Q. Okay.

12 A. But then as I became a husband and a father later
13 on, you know, and you just -- unfortunately see different
14 things or hear different things, you kind of are forced to
15 pick sides.

16 Q. Are there -- have there been any cases that you
17 followed in the news or the media that you felt were
18 appropriate cases for the death penalty?

19 A. Well, I've read on the Manson killings and I guess I
20 felt that that was a circumstance. You know, it's always
21 third hand so I can't say directly.

22 Q. All right.

23 A. And I guess I felt that what went on in Oklahoma
24 City --

25 Q. Right.

1 A. -- was dad went on there was something -- especially
2 where children were involved.

3 Q. Okay.

4 A. Others, it's kind of hard to comment on because
5 you're so removed, so I just kind of reserve judgment until I
6 get better than just third-hand representation.

7 Q. Okay. In Texas there are only certain crimes which
8 are appropriate for the death penalty. They have to be
9 murder cases, intentional killings, and not every murder case
10 is a death penalty case. In fact, a great majority of the
11 murder cases probably are just that, murder cases which carry
12 a punishment range of 5 to life. There are certain types of
13 murder cases, ones that what we call that have aggravating
14 circumstances which make them eligible for the death
15 penalty.

16 First of all, it has to be an intentional killing
17 without legal justification. That is, it's not done in
18 self-defense, something like that. It's not an accident.
19 It's an intentional killing. It has to be done with an
20 aggravating fact, such as murder during the course of a
21 felony, such as robbery. A guy goes in and robs a 7-Eleven
22 store and shoots the clerk. That would be a death penalty
23 case. Murder during a burglary. Someone breaks into
24 someone's house, murders someone in the house, it can be that
25 offense. During a kidnapping or during a sexual assault.

1 Those types of cases could be capital murder cases.

2 There's also situations where it's a specific type
3 of victim, such as a police officer, a fireman while they're
4 on duty, murder during -- while they're on duty, that can be
5 a capital murder case. Murder of a child under the age of 6
6 can be a capital murder case. If you murder someone for
7 money like a hitman situation, or if you hire someone to
8 murder for money, that could be a situation for the death
9 penalty. But those are about the types of cases that are
10 reserved for the death penalty.

11 Is there anything on that list which you would --
12 from your own opinion say, no, I don't really agree with that
13 in those types of cases, or do those cases from your own
14 point of view sound about right for consideration?

15 A. The only thing I would disagree with is I don't know
16 why somebody selected 6 years and under for. A child is a
17 child.

18 Q. Okay.

19 A. So that's the only thing --

20 THE COURT: Where would you put the age?
21 You're king for the day. No legislature to worry about.

22 VENIREPERSON: I think that any time you rob
23 anybody of innocence, but I would think 12 and under.

24 Q. (By Mr. Shook) Okay. The way the statute is set up
25 is a trial is divided into two parts, and I believe you've

1 been on a criminal jury before; is that right?

2 A. I was on the drunk driving jury.

3 Q. Okay. A misdemeanor offense?

4 A. Yes, I believe --

5 THE COURT: Six-person jury, Mr. Hiller? Do
6 you recall?

7 VENIREPERSON: Yes, sir.

8 Q. (By Mr. Shook) It's still a criminal offense. In
9 fact, even though it's a misdemeanor, the same principles --
10 legal principles will apply to it just as they would here.

11 Now, the setup is different for punishment. Did you
12 even consider punishment in that case, or did the Judge do
13 that?

14 A. That was the Judge. We just had to rule on whether
15 or not he was guilty or innocent.

16 Q. That's often the case in misdemeanor DWI's.
17 Obviously, in a death penalty case the jury decides both
18 issues, and the trial is divided in two portions. The
19 guilt/innocence stage is the same as would be in your case,
20 the misdemeanor case. That is, the rules are the same. The
21 State has the burden of proof, that sort of thing. And the
22 only issue at that time is has the State proven the
23 allegation, the indictment. If you believe the State hasn't,
24 have a reasonable doubt about it, then you find the defendant
25 not guilty and everyone goes home.

1 If you believe the State has proven the indictment
2 beyond a reasonable doubt, that's when you move to the second
3 portion of the trial. That's where a capital murder case
4 gets a little different because you can hear additional
5 testimony at that time about the person's background, that
6 sort of thing. And at the close of that you get these
7 special issues which we'll go over in a minute.

8 But if you answer those special issues yes and no,
9 that is, if you believe the State has proven that the
10 defendant's a continuing danger to society, that's Question
11 Number 1 basically.

12 Number 2 is, is there mitigating evidence that you
13 think a life sentence should be assessed rather than a death
14 sentence. If you answer it yes and no, that is, he's a
15 danger and there's not sufficient mitigating evidence, the
16 defendant will receive a death sentence. If you answer the
17 questions any other way, the defendant will get a life
18 sentence. Once you have find the defendant guilty of capital
19 murder, there are only two choices. It's either going to be
20 a death sentence or a life sentence, and that depends on how
21 you answer those questions.

22 Is that clear to you?

23 A. Yes.

24 Q. Okay. Are you familiar with the method of execution
25 in Texas?

1 A. It's lethal injection.

2 Q. That's correct. It's has gotten a lot of publicity,
3 I think mainly because of President Bush's election, the
4 media seemed to really scrutinize sometimes. From my
5 personal point of view, they like to make controversy, and
6 that's something that might be controversial. But whatever
7 reasons, the media has really scrutinized it in the last
8 couple of years.

9 In Texas the method is the same. If you find the
10 defendant guilty, if you answer those questions yes and no,
11 the Judge wouldn't have a choice. He would sentence the
12 defendant to death. At some point in time after all the
13 appeals are out, he would be executed in the same manner.
14 You may have read about that. Oftentimes when an execution
15 takes place, it will appear locally in the Dallas Morning
16 News. Sometimes if they're -- get enough coverage. Back
17 when they occurred, the news media -- electronic media will
18 cover it also.

19 But the method of execution is the same. After 6:00
20 p.m., a defendant will be brought into the death chamber,
21 he'll be strapped on a gurney. There would be witnesses from
22 both sides, the defendant's relatives and also the victim's
23 relatives if they chose to be there. Hypodermic needles
24 would be placed in his arms, and at the appropriate time
25 lethal substances would be injected into his body. This is

1 something that happens I would say on a regular basis. As
2 many as 42 have occurred in one year in Texas. As little as
3 just three or four before. But it's something that occurs
4 monthly now I'd say. So we're not talking about an abstract
5 idea when we talk about the death penalty in Texas. It's
6 very real that's very real. And if you sit on a jury and
7 find the defendant guilty and answer those questions yes and
8 no, you can fully expect that will happen to the defendant in
9 this -- in that case. And we must say from our point of
10 view, that's our goal in this case. We want the defendant to
11 be executed someday and feel we have the evidence that will
12 prove that to you.

13 You've told us philosophically you believe in the
14 death penalty as a law and as a just punishment in certain
15 types of cases. Do you feel you can sit as a juror and
16 answer those question yes and no, knowing that when you did
17 that some day the defendant in this case would be executed?

18 A. Yes.

19 Q. Okay. Let me go over some of the rules that apply
20 in this case. First of all, as I said before, the trial is
21 divided into two portions. The State must prove the case
22 beyond a reasonable doubt. That burden of proof applies to
23 every criminal case. It applied to the DWI case you sat on.
24 The State had that burden of proof, and it applies to this
25 case. It's a cornerstone of our Constitution. That burden

1 of proof never shifts. It never goes to the defense. The
2 burden of proof always stays at this table.

3 Do you agree with that law?

4 A. Yes.

5 Q. Do you feel you can follow that law?

6 A. Yes.

7 Q. Okay. If we fail to meet our burden of proof, would
8 you find the defendant not guilty?

9 A. Yes.

10 Q. Okay. The burden of proof goes to every portion of
11 the indictment. The Judge will tell you that if we fail to
12 prove any portion of the indictment to you beyond a
13 reasonable doubt, you must find the defendant not guilty.

14 Let me give you a couple of examples. One would be
15 we have to prove the identity of the defendant, who committed
16 this crime. Obviously, if you had a reasonable doubt about
17 that at the close of the trial, it would be pretty much of a
18 no brainer, you'd find him not guilty. But it goes to more
19 than that. For instance, we have to prove what county it
20 occurred in, Dallas County. The law says the county it
21 occurred in, as well as the identity of the defendant, are
22 equal under the eyes of the law. If we proved every part of
23 the indictment, but failed to prove to you beyond a
24 reasonable doubt that it occurred in Dallas County, you'd be
25 obligated to find the defendant not guilty. Perhaps the

1 evidence showed that maybe it happened in Collin County or
2 Ellis County, but you had a reasonable doubt about that in
3 that situation.

4 Would you be able to find the defendant not guilty
5 if you had a reasonable doubt on a portion of the indictment?

6 A. You'd have to.

7 Q. Okay. You understand that it's just as important on
8 one portion as it would be the identity?

9 A. Completely.

10 Q. Give you the same example on manner and means. We
11 might have, let's say in an indictment, alleged that the
12 defendant shot the deceased wherein the medical evidence
13 showed the actual killing was done by a stabbing death. Some
14 people might view that as a technicality, but it's not under
15 law. The Judge would be quite clear that if have a
16 reasonable doubt -- even about that issue, you'd have to find
17 the defendant not guilty.

18 Could you follow that rule of law?

19 A. You'd have to.

20 Q. Okay. The defendant has a right to testify if they
21 want to. No one can stop them in their trial. Did the
22 defendant testify in the DWI trial that you sat on?

23 A. No, he did not.

24 Q. Okay. Then the same rule of law applied. I don't
25 know if you remember it, but you would be given an

1 instruction in that case, as well as if the defendant didn't
2 testify in this case that if a defendant chose -- chooses not
3 to testify, you can't hold that against him. You can't use
4 that as evidence against him. The reason we have that is
5 because there can be many reasons that a person may not
6 choose to testify obviously. They may be real guilty and
7 they don't want to answer questions. They may not be very
8 educated and could be made to look guilty. They may be very
9 shy and look bad in front -- their lawyer might tell them I
10 don't want you to testify because I don't think the State has
11 proven the case and relies on their expert opinion. The law
12 takes care of that by just instructing the jurors you can't
13 consider that.

14 Could you follow that rule of law?

15 A. Yes.

16 Q. Okay. You might hear evidence of confession in a
17 case. You might be able to consider that. You might get an
18 instruction that a defendant has to be given his rights
19 before he confesses. You've probably heard that, the Miranda
20 rights. If you grew up watching Dragnet like I did, you
21 every -- every time that show came on. A person has to be
22 fully informed of his rights and give those up before he can
23 give an incriminating statement against himself. And the
24 Judge will instruct you in that manner.

25 If you believe that maybe the defendant wasn't given

1 his full rights, maybe he wasn't informed of his right to
2 counsel, that sort of thing, then the Judge would instruct
3 you, you would have to disregard that confession and just
4 consider all the other evidence you heard. That might even
5 require you to find the defendant not guilty even though you
6 heard his confession because you disregard that particular
7 piece of evidence.

8 Could you do that if you felt that was the -- that
9 was the evidence that you heard, that you did have a
10 reasonable doubt about whether he given his full rights on a
11 confession?

12 A. Again, you'd have to.

13 Q. Okay. Now, the -- as I said, the burden of proof is
14 beyond a reasonable doubt on the first part. If we meet that
15 burden, we then move to the second part where you get these
16 special issues. And let's talk about those for a second. If
17 you'd take a moment and read Special Issue Number 1 to
18 yourself.

19 A. Okay.

20 Q. That is a question that we call the future danger
21 question. It asks the jurors to make a prediction about the
22 future, how the defendant is going to behave. The burden of
23 proof is again on the State on that question. We have to
24 prove beyond a reasonable doubt it should be answered yes.
25 That is, you have to presume it should be answered no. The

1 State has to overcome that presumption.

2 A. Right.

3 Q. We do that by -- again, there might be new evidence
4 about the defendant's background we can put on in the
5 punishment stage, but also you get to consider everything
6 you've heard in the guilt/innocence stage, the crime itself
7 to determine that question.

8 Do you think you could answer that question if
9 you're given sufficient information to make that type of
10 prediction?

11 A. Yes.

12 Q. What types of things would you want to know before
13 you answered that question?

14 A. Well, I think here you've got to be looking at the
15 entire set of circumstances around it.

16 Q. Okay.

17 A. I don't ascribe to the idea that somebody being a
18 career criminal and going from theft to murder makes them a
19 likely to continue down that path. However, to judge whether
20 or not a single incident is predictive of a continuance, it
21 really depends on what the State's introduced as evidence and
22 how the State has done their job and whether or not you could
23 conclude reasonably that if left alone to their own devices,
24 whether or not that's going to occur again.

25 Q. Okay.

1 A. I don't think it's an easy thing to do, but you
2 still have to look at it in the abstract I guess.

3 Q. What types of things would you want to hear? What
4 types of evidence would you want to know, if it were up to
5 you?

6 A. I think you'd want to know really what were the
7 circumstances that prompted the act.

8 Q. Okay.

9 A. Is it something that somebody woke up one morning
10 and decided to do something. Is it something that obviously
11 has been building and there's an indication that it's going
12 to continue. Is there something, you know, that's obvious
13 like -- like a situation with the Manson case where it didn't
14 take you long to figure out that that was kind of part of
15 what the personality had become.

16 Q. Okay.

17 A. Again --

18 Q. So the facts of the crime itself would be very
19 important to you?

20 A. Yes, it would.

21 Q. How about the brutality of the crime, would that
22 come into play?

23 A. Most definitely.

24 Q. What about the type of victim, if you had a very
25 innocent victim? You brought up children as an example. You

1 thought it should be even raised higher because of the fact
2 they are children?

3 A. Absolutely.

4 Q. Okay.

5 A. But that all gets into the whole situation of
6 crossing that border over what's right and what's wrong. If
7 they had absolutely trashy morality in that case, then it's
8 taking you down that path of making that decision.

9 Q. Also, other than just the facts of the case, you get
10 to hear about a defendant's prior criminal history if it
11 exists.

12 A. Uh-huh.

13 Q. We can bring up those things. The law allows us to
14 bring in witnesses for other crimes that may have occurred.
15 You get to hear good things also. It's kind of like the old
16 show, This Is Your Life, good things, bad things. You get to
17 consider all those things when looking at this question.

18 The definitions in this question are going to be
19 left up to you. You know, you'll get plenty of legal
20 definitions in the first part of the trial.

21 A. Uh-huh.

22 Q. But here, the legislature has decided that the
23 definitions should be left up to you and the other jurors.
24 We have to prove beyond a reasonable doubt -- let's talk
25 about it, that there's a probability --

1 A. Uh-huh.

2 Q. -- that the defendant would commit criminal acts of
3 violence. When you see the word "probability" in the context
4 of that question, what does it mean to you?

5 A. Well, it means that there's a likelihood that
6 something like that's going to happen, but then you're
7 getting into stages. Two percent likelihood of something
8 happening is far different than 75 percent likelihood of
9 something happening.

10 Q. You won't be given the definition that they have to
11 prove 75 percent of that thing, but we can give you a few
12 guidelines.

13 A. Right. Things that begin to stack up that show a
14 pattern of behavior.

15 Q. I can tell you the law says that the State does not
16 have to prove it's a certainty.

17 A. Uh-huh.

18 Q. I don't think we can ever prove that, but obviously
19 it's more than a possibility, more than just a chance. It
20 has to be a probability.

21 A. Right.

22 Q. Do you feel comfortable with that?

23 A. Yes.

24 Q. And would you require the State to prove that it's a
25 probability?

1 A. Yes.

2 Q. Okay. We'd have to prove that the defendant would
3 commit criminal acts of violence. What do criminal acts of
4 violence mean to you?

5 A. Well, I guess it goes beyond things like taking down
6 signs and throwing rocks through windows.

7 Q. Right.

8 A. You're getting into again something whether it's a
9 degree of maliciousness and it's not --

10 THE COURT: Person-to-person type --

11 VENIREPERSON: I think it goes to --

12 THE COURT: -- assaultive behavior or
13 something like that?

14 VENIREPERSON: Blowing up somebody's car
15 because you don't like them. If that's person-to-person, I
16 would put that in that case.

17 THE COURT: Would you consider forgery or
18 writing a hot check a criminal act of violence?

19 VENIREPERSON: I don't think I would consider
20 that violent. It would be a criminal act.

21 THE COURT: Or jaywalking?

22 VENIREPERSON: That's correct.

23 THE COURT: Spitting on the sidewalk?

24 VENIREPERSON: No.

25 THE COURT: Okay. The State may continue.

1 Q. (By Mr. Shook) Now, let's move on to the second
2 question. That's the one that's a little bit longer. If
3 you'd take a moment to read that to yourself.

4 A. Okay.

5 Q. That's the mitigation question. Now, this question
6 is different. The State does not have the burden of proof on
7 this question. And the defense doesn't have the burden of
8 proof. It's kind of the safety net, we call it sometimes.
9 You don't reach that question until you've found the
10 defendant guilty of capital murder, until you've found beyond
11 a reasonable doubt that he's a continuing threat to society,
12 and then you decide -- you look back over the facts of the
13 offense and all the background evidence and decide is there
14 sufficient mitigating evidence that tells you a life sentence
15 is more appropriate than a death sentence.

16 A. Uh-huh.

17 Q. Does anything come to mind when we talk about
18 sufficient mitigating evidence that you might -- anything
19 come up that you think, you know, this might be mitigating
20 evidence? Can you think of any types of evidence?

21 A. Drug abuse, fetal alcohol syndrome, mental
22 instability in a family, demonstrable mental illnesses. I
23 mean -- getting smacked by your father for doing something
24 wrong not necessarily, but getting smacked by your father
25 every day of your life just because you woke up, yes.

1 Q. Okay.

2 A. It really needs to be a presentation of what's going
3 on in the context of what's happened.

4 Q. What about -- let's talk about the first thing you
5 brought up, drug use. What are some situations where you
6 feel that might be mitigating?

7 A. If -- if the particular person was a crack baby,
8 something like that. If the particular person was under the
9 influence of some hallucinogenic or something like that when
10 this act occurred.

11 Q. That brings up one point. The law says that if a
12 person commits a crime under the influence of drugs or
13 alcohol --

14 A. Uh-huh.

15 Q. -- if they voluntarily take these things, that's not
16 a legal defense to the crime. Some people disagree with
17 that. Some people think it is actually a legal defense to
18 the crime. But the law states it is not.

19 First of all, let me ask you that. How do you feel
20 about that? Do you agree with the law?

21 A. I agree with that.

22 Q. Okay. But you can take that as a mitigating
23 circumstance in certain situations. It just depends on how
24 you feel about it. Some jurors tell us if they voluntarily
25 take drugs, if they've had a history of doing that or

1 alcohol, then, no, it's not mitigating to me. Other people
2 tell us, you know, it depends on the extent, if it's first
3 time. Other people feel, yeah, if it's committed while
4 they're under -- if they're a drug addict, heroin addict, and
5 they commit this crime, then, yeah, I think that is
6 mitigating. Other people tell us, no, if you're knowingly
7 doing these things, I'm going to hold you responsible. It's
8 not going to be an excuse.

9 How do you feel about those situations as far as the
10 punishment issues?

11 A. Well, I think it definitely -- a lot of what could
12 be presented bears thinking that through. You know, if
13 somebody has been treated for a chemical dependency and they
14 committed a crime and they were sprung from jail early, but
15 that chemical dependency had not really been cured, then, you
16 know, who is bearing an issue there? If there's an addiction
17 that somebody can't control themselves, but yet they were let
18 go early from their sentence because they -- maybe the
19 prisons were overcrowded. There's an issue that's sitting in
20 there. I don't know the answer to that issue off the bat,
21 but if you willingly take drugs or you willingly get yourself
22 drunk, you willingly did that, so, you know, number one, you
23 did that.

24 Q. Okay.

25 A. And you're responsible for your acts.

1 Now, the influence of that to the point of where
2 you've lost the ability to make a moral decision, then I
3 think you're getting into a grayer area, and it's a lot of
4 things that you need to spend a whole lot of time thinking
5 about before you say yes or no or --

6 Q. You talking about growing up with physical abuse,
7 and it could be emotional abuse, too, but physical abuse by a
8 father. Let's say you got hit everyday as you grew up.

9 A. Uh-huh.

10 Q. Some people say that is mitigating, and it depends
11 on the severity of it, obviously. Other people tell us
12 people grow up in those bad situations, yet they still know
13 right from wrong and don't commit these types of acts when
14 they grow up.

15 Go with me a little further about how you feel about
16 that type of physical or how a person might be raised in that
17 environment.

18 A. Well, I think it all depends on what else you're
19 surrounded by in the course of that. People have clearly
20 been abused and they've turned themselves the right way, but
21 normally there's another set of circumstances that caused
22 them to go down that different path. If you're surrounded by
23 nothing but abuse, and I'm not presuming that there aren't
24 other factors that come in, but if that's all you've ever
25 known in your life and your come from begins and ends with

1 that, there's an issue there. And you're getting into again
2 shades of right, wrong, and indifference. But, you know,
3 obviously there is mitigating circumstances that you need to
4 consider very heavily before you say number two. You know,
5 the answer is the death sentence more warranted than life
6 imprisonment.

7 Q. Okay. Would it be important to you if a person has
8 had treatment and things of that nature, if they came from
9 that situation?

10 A. I think that's demonstrable to the fact that an
11 attempt is being made to undo damage that's been done. It
12 may not be successful, but an attempt is an attempt.

13 Q. All right. Let me get into one other area, and this
14 issue may or may not come up. Sometimes jurors consider what
15 we call lesser included offenses. The lesser included
16 offense of capital murder is murder itself.

17 A. Uh-huh.

18 Q. Maybe you were -- you might be on a capital case and
19 might have a reasonable doubt about the underlying felony,
20 but not about the murder. Might find the defendant guilty of
21 murder, instead of capital murder. That changes the penalty
22 range. You don't have the special issues that -- it won't be
23 life or death. What it will be is 5 years in prison up to 99
24 years or life. A very wide penalty range obviously, and
25 we're still talking about an intentional killing.

1 MR. SHOOK: May I have one moment, Judge?

2 THE COURT: You may.

3 Q. (By Mr. Shook) And we can't get into the facts of
4 any type of offense, can't pin you down to the facts, but
5 obviously when you -- considering a punishment in a murder
6 case, the penalty range is very wide because it can be a lot
7 of different types of circumstances. It can be a very brutal
8 killing, very cold-blooded killing with a very innocent
9 victim, could have a long criminal history, that sort of
10 thing.

11 A. Uh-huh.

12 Q. You might have a lot of mitigating factors. Young
13 age. Maybe there's drug abuse. The type of mitigating
14 factors that you've talked about that could come up. And
15 therefore that's why we have this wide range from 5 years in
16 prison, all the way to 99 years or life. You're not required
17 to think of a situation in which you might give the maximum
18 or a situation where you might give the minimum. But what
19 you have to be able to tell the Court is can you keep your
20 mind open to that full range of punishment, and if you think
21 it's appropriate, you'll give 99 years or life for murder or
22 if you think 5 years is appropriate for murder, an
23 intentional killing, you could give as little as 5 years or
24 anything else in between.

25 Do you feel you could follow that law and keep your

1 mind open, wait until all the evidence is in, and then decide
2 what's the appropriate punishment?

3 A. I think you're obliged to.

4 Q. Okay. Again, you don't have to think of a
5 situation. It might be one in a thousand cases where you
6 might think that 5 years is appropriate for murder. As long
7 as you see that situation and think that's what's
8 appropriate, you can assess that.

9 A. Uh-huh.

10 Q. Okay. Oh, let me ask you on the --, you said on the
11 criminal case found that person guilty. The medical
12 malpractice, was that a civil case?

13 A. Yes.

14 Q. And the finding of not guilty, you found in favor of
15 the defense, I guess?

16 A. The -- we found in favor of the doctor that he did
17 not do wrong.

18 Q. Okay. The one question we ask is about -- you're
19 obviously -- things you've witnessed or a family member has
20 witnessed and if you would, looks like back -- you grew up in
21 New Jersey; is that correct?

22 A. Yes.

23 Q. Your home was broken into and your mother was
24 beaten. And you had 5-year-old brother that witnessed that?

25 A. Uh-huh.

1 Q. Did you witness that in any way or --

2 A. I didn't see that. I saw what remained after that.

3 Q. Okay.

4 A. But -- and everything that transpired after that,
5 which deteriorated.

6 Q. Was that person caught and prosecuted?

7 A. That person lived two doors down.

8 Q. Okay.

9 A. And -- I was hoping you'd bring this up. The
10 defendant here bears an incredible resemblance to the father
11 of that person. And after this person was caught, there
12 was -- there were several incidences. My family was
13 threatened. I know we went for a couple of weeks with a
14 loaded shotgun behind the door because of things that were
15 going on. And the police couldn't do anything because they
16 were restrained.

17 THE COURT: Because they what?

18 VENIREPERSON: There just -- it was hard to
19 prove what was going on. There were threatening phone calls,
20 there were dead animals that came flying over the fence,
21 things like that. The mother tried to run me over with her
22 car crossing the street. It was just one thing after another
23 that finally led to the family moving away, but --

24 THE COURT: Your family or the other family?

25 VENIREPERSON: Our family and my father -- the

1 decision that my father made was that he wasn't going to do
2 something that would make a bad situation worse. And so
3 we -- my mom and dad went out and found another home and they
4 moved us away at night.

5 THE COURT: Would you be able to set aside
6 that unpleasant experience?

7 VENIREPERSON: I'm having a problem with that.
8 I've been -- when I first saw the defendant.

9 THE COURT: Only you know if you can.

10 VENIREPERSON: I don't think I can, Judge,
11 because you're talking about a situation where as I
12 understand it, a woman was traumatized and this whole -- this
13 whole experience has just pulled some scars off of some
14 things where just -- to be just completely honest, I don't
15 know that I could, depending on the intensity of the case,
16 condemn somebody and still have in the back of my mind
17 whether or not I was able to set all of that aside. I just
18 can't say so. I've been grappling with it for the last
19 couple of weeks and had a few sleepless nights.

20 MR. BYCK: We'll agree.

21 THE COURT: Your candor is very refreshing.
22 You are excused.

23 (Mr. Hiller Excused From Consideration)

24 VENIREPERSON: Thank you, sir.

25 (Recess of proceedings.)

Reporter's Certificate

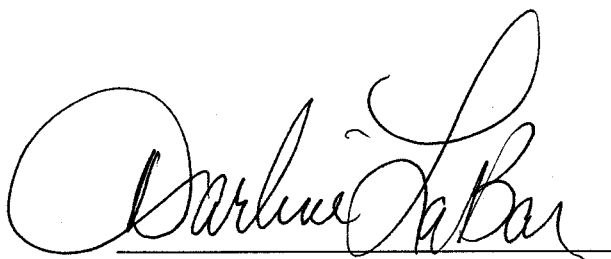
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 19th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

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VOLUME 31 OF 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney
Crowley Criminal Courts Building
Dallas, Dallas County, Texas 75207
Phone: 214-653-3600

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550
MS. MARY MILLER, A.D.A., SBOT # 21453200
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 1st day of May, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:
Proceedings reported by machine shorthand, computer
assisted transcription.

DARLINE W. LABAR, OFFICIAL REPORTER

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THE COURT: Good afternoon. Welcome back.
Ask you to again raise your right hand and to be sworn in.
(Venireperson additionally sworn.)

VENIREPERSON: I do.

THE COURT: Thank you. Though it's been just
a bit over 24 hours ago, let me reintroduce those whom we see
at the counsel table.

Beginning at the far left, the Honorable Greg Davis.

MR. DAVIS: Good afternoon.

THE COURT: Lead prosecutor for the State,
Senior Prosecutor in the Dallas D.A.'s office.

He is joined and assisted by co-counsel, the Chief
Prosecutor in the 194th District Court, the Honorable Mary
Miller.

MS. MILLER: Good afternoon.

VENIREPERSON: Good afternoon.

THE COURT: Moving on to the defense table, we
begin first with one of the three defense attorneys, the
Honorable Jennifer Balido.

MS. BALIDO: Good afternoon.

VENIREPERSON: Good afternoon.

THE COURT: Seated next to Ms. Balido is one
of her co-counsels, a board certified criminal law
specialist, the Honorable Michael Byck.

1 MR. BYCK: Good afternoon.

2 VENIREPERSON: Good afternoon.

3 THE COURT: Seated next to Mr. Byck, opposite
4 Ms. Balido, is the accused, the defendant, Jedidiah Isaac
5 Murphy.

6 THE DEFENDANT: Good afternoon.

7 VENIREPERSON: Good afternoon.

8 THE COURT: Third attorney on the defense team
9 is out of the courthouse this afternoon doing some work with
10 regard to some anticipated evidence to be presented once the
11 trial begins. Her name is Jane Little.

12 Ms. Boales, I know you maybe were a little bit taken
13 aback yesterday when I informed you and the other panel
14 members what this was all about. I want you to relax as much
15 as you can. As I indicated to you and the other panel
16 members yesterday, to the attorneys' questions there are no
17 right or wrong answers. You will be treated by the attorneys
18 with greatest respect, professionalism that possibly can be
19 displayed. Ready to begin?

20 VENIREPERSON: I guess so.

21 THE COURT: Worry not. Worry not. No right
22 or wrong answers as long as they're honest.

23 We'll begin with the State, the Honorable Greg
24 Davis.

25 Mr. Davis, Ms. Boales.

1 MR. DAVIS: Thank you. May it please the
2 Court.

3 CONNIE BOALES
4 was called as a venireperson by the Court and, after having
5 been first duly sworn, was questioned as follows:

6 Voir Dire Examination

7 By Mr. Davis:

8 Q. Good afternoon again, Ms. Boales.

9 A. Good afternoon.

10 Q. Let me just first of all repeat what the Judge just
11 told you because it is true. There are no right or wrong
12 answers this afternoon. Most of the questions that I'm going
13 to ask you deal with how you feel about a subject, what your
14 opinions are. I've done enough of these and I've talked to
15 enough people to know that everybody has differing opinions.
16 They may agree with us. They may disagree. But as long as
17 we know how you honestly feel, that's all that we as
18 attorneys really need this afternoon. Okay?

19 Ms. Boales, I want to start off and just talk a
20 little bit about the death penalty with you, and I know that
21 when you came in here yesterday, I'm sure the last thing you
22 thought you'd hear would be that you'd been called up here as
23 a potential juror on a death penalty case.

24 Can you tell me, what your initial reaction when
25 Judge Entz told you that that was the type of case we were

1 trying this afternoon?

2 A. I guess the best word to describe it would be
3 shock. It wasn't what I expected. The only time I had been
4 in court was on a traffic violation so --

5 Q. Okay.

6 A. -- just didn't expect it at all.

7 Q. And I know you told us you're in favor of the death
8 penalty. I know also from experience, I had a number of
9 people me that even though they in favor of the death penalty
10 in the abstract, they think it serves a worthwhile purpose,
11 they're in agreement with it, think it's necessary at times,
12 maybe they feel differently when they're actually in the
13 position that you are, possibly sitting on this type of
14 jury. Because if you look at Mr. Murphy down here, you can
15 see there's nothing abstract about him. He's a living,
16 breathing human being. Our position is very clear. We're
17 actively seeking the death penalty against him. That
18 position will not change.

19 At the punishment phase I'm going to ask you to
20 answer these special issues yes and no which would result in
21 Judge Entz having to impose a sentence of death on him. And
22 again, some people say I'm in agreement with what you're
23 doing, but I don't think that I can take part in that myself,
24 I don't want to have to bear that, I don't want to have the
25 possibility of waking up years from now and seeing him on

1 television, knowing that my verdict has eventually led to his
2 death.

3 Can you just tell me how you honestly feel about
4 personally taking part in this kind of case?

5 A. Well, after yesterday, I really thought quite a bit
6 about that last night. And I really feel like I could take
7 part in a decision like that, that I could look at the
8 evidence and see and weigh it to the best of my ability and
9 take part in that kind of a decision.

10 Q. Fair enough. Here's what I would expect jurors to
11 be able to do in this case. If the State of Texas proves Mr.
12 Murphy's guilt beyond a reasonable doubt, if we meet our
13 standard of proof in this case, then I would expect a jury to
14 find him guilty if the facts are there.

15 Do you feel like you could do that?

16 A. Yes, I do.

17 Q. I would also expect jurors to answer Special Issue
18 Number 1 yes if I prove beyond a reasonable doubt that it
19 should be answered yes.

20 Do you feel that you can do that, too?

21 A. Yes, I do.

22 Q. And thirdly, I would expect jurors on Special Issue
23 Number 2 to be able to look at all the evidence again,
24 determine if there's a mitigating circumstance or not where
25 his life should be spared. If there is no mitigating

1 circumstance, then I would expect a juror to answer that no
2 resulting in a death sentence.

3 Could you do that, also?

4 A. Yes, I could.

5 Q. Ms. Boales, can you tell me just briefly why are you
6 in favor of the death penalty?

7 A. I feel it is to be used as a deterrent to severe
8 crimes against persons, bodily harm, death. I feel like
9 people make choices in their life. And if they choose to
10 take a life, then they should suffer the consequences, that
11 they know beforehand what those consequences are. And just
12 like any other thing that we do in life, we know what we do
13 we bear a responsibility for and we must step forward and
14 take that responsibility.

15 Q. Okay. Now, understanding in the State of Texas and
16 I believe Judge mentioned this yesterday, if an individual is
17 found guilty of capital murder, we don't have automatic
18 death. What we have in effect is automatic life. And then
19 if certain requirements are met, Special Issues 1 and 2, then
20 that would be a death sentence.

21 And I take it from your questionnaire you're not
22 saying, are you, that on every capital murder case the person
23 should die, are you?

24 A. No.

25 Q. Okay. What you're saying, I guess, is I hear you

1 saying you're a very strong believer in personal
2 responsibility?

3 A. Yes.

4 Q. And again, the proper type of capital murder case,
5 if the facts are there, then you could assess a death penalty
6 if you thought that was the right thing; is that right?

7 A. Correct.

8 Q. Let's -- let's talk a little bit more about these
9 special issues then, because this is really where the death
10 penalty is different than other types of felony cases.
11 Again, before you get to these special issues you will have
12 already decided in this type of case that the defendant is
13 guilty of capital murder. That means in this case you will
14 have decided beyond any reasonable doubt that this defendant
15 intentionally took the life of a woman by the name of Bertie
16 Cunningham, either by shooting her or by drowning her and
17 that he did so during the commission of either a robbery or
18 kidnapping, so you've decided that's true beyond any
19 reasonable doubt. We move to the punishment phase.

20 Now, in the punishment phase there may be additional
21 testimony, additional evidence that you hear that maybe you
22 couldn't hear in the first part of the trial. Generally
23 speaking, the State cannot offer evidence of a defendant's
24 prior convictions or prior criminal history until the second
25 phase of the trial. If it's available, then you may hear

1 whether that individual has -- has been convicted of other
2 criminal offenses, has he been arrested before --

3 THE COURT: Or not.

4 Q. (By Mr. Davis) Or not. That's true. Has he been
5 through the criminal justice system or not. Has the system
6 had an opportunity to try to help him. What has been his
7 reaction to all those things. And from the other side, the
8 defense has an opportunity to present testimony to you that
9 they think would be favorable to him. So you get all of
10 those -- all those facts. Then we give you these special
11 issues.

12 When you look at Special Issue Number 1, Ms. Boales,
13 and this question -- I want you to think without regard to
14 what the rules of evidence may be or what the legalities may
15 be, but if you had your druthers about the type of evidence
16 that you'd like to hear and to have available to you when you
17 answer Special Issue Number 1, what are some of the things
18 that you'd like to know?

19 A. Well, I would definitely want to know history. I
20 think with the history and with evidence available in this
21 particular case that would probably be enough.

22 Q. You know, and as the Judge indicated, you may have a
23 person who's never been in trouble before. In fact, I guess
24 in theory you could have someone who's been an absolute
25 wonderful citizen. People come in here and tell you he has

1 been a foundation, a pillar of that community, done wonderful
2 things for people, been a wonderful family man, accomplished
3 a great deal in his life, and somehow he's committed a
4 capital murder. On the other hand, as we've talked about,
5 the opposite could be true. You also get to look at the
6 particular facts of this particular crime itself, and that
7 may be important to you. Just how was it committed. Who was
8 the victim. Did they have a relationship or not, you know.
9 Again, you could have a situation where the deceased and the
10 defendant knew each other. Maybe they had a good
11 relationship that went sour. Maybe they had a terrible
12 relationship, or maybe there's no relationship at all. It's
13 a stranger-on-stranger, very randomly selected victim of some
14 sort. You get to look at that, too. What was the
15 defendant's reaction after he committed the crime. I suppose
16 you could have someone who's instantly remorseful, waits,
17 calls the police, cooperates with them. Maybe the officer
18 even comes in here and tells you this guy was on his hands
19 and knees praying to God for forgiveness when I encountered
20 him for the first time. Or again, the opposite may be true.
21 Maybe he didn't stay at the scene. The police had to hunt
22 the man down. When they did, he wasn't showing any remorse.
23 So you can see there's a lot of things there.

24 Do you think that might be helpful to you also?

25 A. Yes.

1 Q. Ms. Boales, I want to look with you and talk about
2 three particular words or phrases here in Special Issue
3 Number 1. The reason I do that is because none of these
4 words or phrases have legal definitions. Some of the words
5 and phrases in the first part of the trial will be defined to
6 you by Judge Entz. These will not, so we kind of like to get
7 an idea of how you look at these things.

8 The first word is probability. The legislature has
9 given us these words. Whether there is a probability that
10 the defendant would commit criminal acts of violence. Now,
11 they could have said to us -- to the State of Texas that we
12 have to prove to you that there's an absolute certainty that
13 this defendant would commit criminal acts of violence. The
14 standard is not that high.

15 Now, they could have gone lower and they could have
16 said it's enough for the State to prove that there's a
17 possibility or a mere chance that this defendant would commit
18 criminal acts of violence. I know that I have to prove more
19 than that. I know going into here that probability does not
20 mean possibility or chance. I know that. On a scale of zero
21 to a hundred because sometimes we ask, you know, if you had
22 that to look at, where would you put probability, obviously,
23 to be a probability, it has to be greater than 50 percent.
24 Anything less would be a possibility. It's kind of like
25 majority, minority.

1 Would you agree with me that probability, if you
2 look at that kind of scale, would have to be greater than 50
3 percent in order to be a probability as opposed to a
4 possibility or a chance?

5 A. Yes.

6 Q. Okay. Is that what you're going to require in this
7 case, a probability, not a mere possibility or a chance?

8 A. Yes.

9 Q. Okay. Criminal acts of violence. Most people tell
10 me the way they look at that, that means someone else is
11 involved. Either someone else is actually harmed or someone
12 else is put in threat of harm. The distinction being if you
13 had a property crime, maybe someone broke into an abandoned
14 house where no one is around, stole something, there's really
15 no violence to that.

16 Do you see that distinction, also? You need to
17 answer out for the court reporter. I'm sorry.

18 A. Yes.

19 Q. Now, word "society." Continuing threat to society.
20 When you think of society, who comes to mind?

21 A. Everybody, people.

22 Q. All right. Could be people like you and I who kind
23 of live in a free world. In the context of Number 1, though,
24 can you see how prison may also be part of society?
25 Sometimes people don't think of that, but remember yesterday

1 the Judge told you that a capital life sentence means a
2 person has to spend at least 40 calendar years in prison
3 before he becomes eligible for parole.

4 I like to think of it this way and see if you
5 agree. It's wherever the defendant may find himself. It's
6 whoever he may come in contact with. That could be a
7 prison. It could be the free world. Sometimes people say,
8 well, now that I think about it, that life sentence, I've
9 heard it argued society should only mean prison, that you
10 should forget the free world. But again, that's not the way
11 the law looks at it. You're free to consider the free
12 world.

13 Have you heard about the case involving the Connally
14 7, the seven inmates who escaped from the prison system?

15 A. Yes, I did.

16 Q. Some of those inmates actually were serving life
17 sentences when they escaped and came up to Irving and killed
18 a police officer. So you can see how society could also
19 encompass the free world, I suppose?

20 A. Yes.

21 Q. Do you have any questions on Special Issue Number 1
22 before we go to Number 2?

23 A. No, sir.

24 Q. Again, remember the burden of proof on Special Issue
25 Number 1 is on the State of Texas. You have to wait all of

1 the evidence is in, including what you hear at the punishment
2 phase, then you look at it and you say, has the State proven
3 to me beyond a reasonable doubt that Number 1 should be
4 answered yes. If so, you answer it yes. If we fail to meet
5 our burden of proof, you say no.

6 Could you do that?

7 A. Yes, I could.

8 Q. The reason I ask that is because sometimes people
9 will say, you know, I find that someone intentionally killed
10 during the course of a kidnapping, that's the type of person
11 in my mind that's always going to be a continuing threat.
12 He's going to be a danger. I don't care what other evidence
13 I hear, that's always going to be the case. I'll
14 automatically answer Special Issue Number 1 yes. Now, I
15 don't hear you saying that. I hear you saying that you want
16 to wait and you want to hear all the evidence before you
17 answer that; is that right?

18 A. That's true.

19 Q. Special Issue Number 2. When you get down there,
20 you're two-thirds of the way to a death sentence. You've
21 already found the defendant guilty. You've already decided
22 beyond a reasonable doubt he's going to constitute a
23 continuing threat to society. Now what the law asks you to
24 do again is to step back, take another long look at all the
25 evidence, no matter what it is or where it came from, and

1 determine is there something in that evidence that you feel
2 rises to the level where that person should be given a life
3 sentence instead of the death sentence. It could be personal
4 to you. You get to decide what that is. We don't have a
5 list of things that you mark off as mitigating or not.
6 That's a personal decision for you to make.

7 But the key is to be able to make that kind of
8 inspection, don't go down there automatically saying, well,
9 if they're a danger, they're getting death, I don't care what
10 I see because I'm not taking a chance with that person. The
11 law again says, even if you think they're a threat, take a
12 look, maybe there's something there that you haven't figured
13 in yet that you want to look at.

14 Do you feel like you could do that?

15 A. Yes, I do.

16 Q. You look at all the things that you can look at when
17 you make that decision. Again, you get to look at this
18 offense, the circumstances of the offense, the types of
19 things that we talked about before. The defendant's
20 character and his background. Again, the same types of
21 things. Does he have a history? Does he not have a
22 history? His personal moral culpability. That's really just
23 how blameworthy is he for this particular crime.

24 Give you an example of what we're talking about. If
25 two people go out and commit a capital murder, maybe someone

1 is the getaway driver, the other person actually pulls the
2 trigger, I've had some people tell me there's kind of a
3 degree. They're both guilty, but as far as punishment, maybe
4 they see something of a distinction there. So there's a
5 blameworthiness that attaches to the gunner instead of to the
6 driver.

7 So you look at all those things and then you say is
8 it there or not. When you look at the phrase "mitigating
9 circumstances," what sort of things, if any, come to your
10 mind, Ms. Boales?

11 A. What were the causes, what happened before, what
12 happened during the incident that caused the cases before
13 us. You know, it's -- things happen. Life happens, so --

14 Q. Let me go through some of things that some people
15 have mentioned to me. Some people would say alcohol or drug
16 use. Some people say it's a disease. People can't control
17 themselves. If they've had that problem, maybe they'd look
18 upon that as mitigating. That's one extreme. I've had other
19 people say on the other hand, no, it's a personal choice that
20 someone makes to either take alcohol or drugs and so I'm not
21 going to give them credit for it. And there's another group
22 that kind of comes down in the middle and they say, well, I
23 want to look at all the facts. Maybe there's a distinction.
24 If the person has never used before, they don't know how the
25 substances would affect them. They go out. They get high.

1 They do something they normally would not do. And they see a
2 distinction perhaps between others who are maybe a longtime
3 user, knows exactly how that substance will affect him.
4 Maybe he's even told other people that he gets wild or
5 violent when he gets high or drunk.

6 How do you view that kind of issue?

7 A. I think I would be one of the middle of the
8 roaders. I would want to know background. I would want to
9 know -- I would want to know everything before I made a
10 decision.

11 Q. That's a good way to do everything is to look at
12 everything in this case. Take all the facts into account.

13 Some people have told me that maybe age would be a
14 consideration. I guess the thought being that younger people
15 are more capable of being rehabilitated. I've had probably
16 an equal number of people who tell me age really probably
17 would not be a factor as long as that person is old enough to
18 know the consequences of his action. As long as he knows
19 that, that's really what they're looking for. I've had
20 people say, for instance, people in their teen years who are
21 young, maybe can't appreciate what they're doing as much as
22 someone who's over the legal age, which is 17 in the State of
23 Texas. No one younger than 17 could be sentenced to death in
24 the State of Texas.

25 What are your feelings there?

1 A. I hadn't really thought about that too much. Age
2 might be a consideration for me. I think maturity, too.
3 Because you can have young people who are very mature and
4 very aware, worldly. So again, I'd have to look carefully.

5 Q. I guess maybe you might want to couple that with the
6 background --

7 A. Exactly.

8 Q. -- maybe to see have they been through the criminal
9 justice for instance. Have they done something that has put
10 them in that position. Have there been efforts made to deal
11 with them, to help them, to rehabilitate them.

12 A. Exactly, yes.

13 Q. Is that the kind of thing you're looking at?

14 A. Yes.

15 Q. Some other people have mentioned just a person's
16 upbringing. Issues of abuse come into play sometimes. I've
17 had people say they want to look at, look at all the facts.
18 And when I talk to them about that, I'd like for you to
19 understand, part of your job will be to determine what the
20 facts are in this case. You get to do that. The Judge will
21 tell what you the law is, but you get to determine the facts.

22 When it comes down to the issue of abuse, if that's
23 raised, for instance, you get to listen to the witnesses,
24 decide if you believe that claim or not. You may listen to
25 the witnesses and determine that you don't think it ever

1 happened, and that's your choice. Sometimes jurors tell me
2 that in that regard they'd like to know when did that person
3 first make that claim. I mean, did he do it fairly quickly,
4 or did he wait years and years. Who did he tell. Was there
5 some motivation for him to make that claim. Did he have some
6 advantage or some gain in mind when he made the claim.

7 And the question I also like to ask is, do you think
8 that sometimes people make those claims falsely against other
9 people? They claim to be the victim of abuse when no abuse
10 ever took place?

11 A. Yes, I do.

12 Q. Lastly, and I think we've already talked about
13 remorse, but lastly at times there may be an issue about how
14 an individual has acted waiting for trial. How has he
15 behaved in the county jail. You can see, I guess, how it
16 might be a negative against him or for him in Special Issue
17 Number 1 or 2, the thought being if a person has been behaved
18 and been a model prisoner in the county jail, maybe he won't
19 pose as great a threat in the prison system if he's placed
20 there. Just the opposite being true perhaps, if he can't
21 even behave himself waiting for trial, knowing that those
22 issues will be raised for or against him, then maybe that's
23 another indicator.

24 How do you look at that? How would you expect an
25 individual to act in the county jail if he knew that his

1 behavior could be used for or against him in this trial?

2 A. I would certainly expect him to behave himself if he
3 knew it could be used against him.

4 Q. Right. Do you have any questions on Special Issue
5 Number 2?

6 A. No, I don't think so.

7 Q. Pretty much feel like you understand what the law is
8 going to ask you to do and the types of things that you'll be
9 entitled to look at as possible mitigating circumstances?

10 A. Yes.

11 Q. Ms. Boales, I want to go through some of the legal
12 protections that Mr. Murphy has. These are very important
13 because they insure that he's going to get a fair trial. And
14 that, I can assure you, is very important to everyone in this
15 courtroom. Again, it's very important that when we end this
16 trial, no matter what the verdict is, if it's death, that we
17 all be able to leave this courtroom knowing that all his
18 legal rights were protected, he got a fair trial. We don't
19 have to second guess anything that happened. And the good
20 news is Judge Entz -- I've tried a case -- death case with
21 him before. You won't find a better arbiter of the law than
22 Judge Entz. Every legal protection will be protected to its
23 fullest.

24 So let's go through some of these rights. The right
25 to presumption of innocence. As he sits right here right

1 now, he's presumed innocent. Even though we all know certain
2 things have already happened, he's been arrested and charged
3 with the offense of capital murder, he's been indicted for
4 capital murder. We're about halfway through jury selection,
5 but notwithstanding all that, he is still presumed innocent
6 of the offense.

7 Can you give him that presumption?

8 A. Yes.

9 Q. That presumption means you can't find him guilty
10 until the State of Texas proves his guilt beyond a reasonable
11 doubt. If we do it, fine. If we don't do it, then you find
12 him not guilty.

13 Could do you that, too?

14 A. Yes, I could.

15 Q. He has the right to remain silent. No one can force
16 a defendant to testify against himself. If he doesn't
17 testify in this case, Judge Entz will instruct you that you
18 cannot hold that against him or consider it for any reason.

19 Can you do that, too?

20 A. Yes, I can.

21 Q. When I said that I have to prove the case beyond a
22 reasonable doubt, I've got to prove all the essential
23 elements of that indictment beyond a reasonable doubt. They
24 are all very important.

25 Let me give you an example of just how important all

1 of them are. In this case I have to prove to you first that
2 this offense happened in Dallas county, Texas. If I fail to
3 do that, even if I prove everything else, you still have to
4 say not guilty. I've had some people say, you know,
5 that's -- you know, you're pushing me pretty hard for what I
6 would term a technicality or a loophole. You mean to tell me
7 that if you even prove this defendant maybe very brutally
8 killed an individual, intentionally killed an individual
9 during the commission of a robbery or kidnapping, I have
10 absolutely no doubt this person is a continuing danger
11 wherever he is, you mean to tell me that if you don't prove
12 Dallas County, I've got to say not guilty? That's exactly
13 what I'm saying to you.

14 If you're selected on this jury, you'll take an
15 oath. You haven't taken it yet. That oath would make you
16 render a true verdict according to the law and the evidence
17 in this case. Some people they've got the discipline to
18 follow the law. Some people say, I don't know. My emotions
19 maybe would catch up with me. I don't think that morally I
20 could find someone not guilty if I knew in my heart of hearts
21 that they really did something. That's kind of one of those
22 places where, you know, the law comes in conflict maybe with
23 our feelings. But the law in that kind of instance would
24 require you to go back there -- even if all 11 people were
25 against you, and they said forget the law, look at your

1 common sense, you'd have to vote not guilty if you are going
2 to be true to your oath.

3 Could you do that?

4 A. Yes, I could.

5 Q. Let me give you another example. Sometimes this
6 occurs in a case like this where you might have a written
7 statement taken from a defendant. The law in that kind of
8 case would say before you can consider the statement, it has
9 to be shown beyond a reasonable doubt that all of the
10 statutory warnings were given to the suspect before he gave
11 the statement. You know, a lot of these television shows,
12 the police shows, NYPD Blue, you can name them, you know, you
13 can probably tell me what the Miranda warnings are from
14 memory, too. But let's say in a case -- and I'm going to
15 make this pretty extreme to make a point. Let's say I went
16 out today and fire bombed a child care center and I killed a
17 hundred children intentionally. No one saw me do it. I got
18 away scot-free.

19 A couple of days later the police stopped me for
20 some reason, and I'm just of a mind to tell them what I did.
21 Maybe I want to brag about it. And I go down to that police
22 station voluntarily. They put me under some sort of custody
23 and they start talking about the offense. And I say, I'll
24 give you a statement. And the detective -- let's say he's
25 just been overworked and forgets to give me one of the

1 warnings, maybe the warning that you've got the right to have
2 an attorney appointed if you can't afford one. I don't want
3 an attorney. I never asked for an attorney. I go ahead and
4 give the statement to him freely. He doesn't threaten me.
5 Doesn't promise anything to me. I give the statement. He
6 files the charges. I get charged. I get to trial. The
7 detective testifies, and he testifies to the jury that he
8 gave only three of the four warnings and he's very honest
9 about it. Says I just forgot to give that warning. He never
10 asked for an attorney, so I didn't think anything of it. You
11 go back and that's the only evidence you have against me.
12 There's no fingerprints, there's no DNA, there's no
13 photographs, there's no eyewitnesses, nothing else. And the
14 Judge instructs you that that warning wasn't given and you
15 know it's not, you've got to toss that statement aside, look
16 at the other remaining evidence. Problem is in my case there
17 is no other evidence. So if you throw the statement out, I
18 go scot-free. I walk out there. Maybe I've even made a
19 statement in that voluntary confession that if I ever see the
20 free world again, I'm going to fire bomb the first child care
21 center I see. You go back there to the deliberation room and
22 the other jurors says there's no way I'm letting him out
23 around my children. You see the predicament again. It's the
24 same kind of predicament. You know I'm guilty. No doubt in
25 your mind. But again, your oath requires you to say not

1 guilty because of one of those technicalities.

2 But trust me, we know what the rules are here.
3 We're prepared to play by them. No problem there. Even in
4 that kind of situation could you say not guilty, if
5 necessary?

6 A. I wouldn't like it, but, yeah, I would feel like I
7 had to.

8 Q. I wouldn't expect to you like it. I know that would
9 be very difficult. We put jurors in difficult situations
10 sometimes. But really, the key is, and I can give you a
11 hundred examples probably, but the key is to be able to
12 follow the law. One last thing --

13 THE COURT: Voice was gentle, but the
14 questions were tough, weren't they?

15 VENIREPERSON: Yeah.

16 THE COURT: Go ahead.

17 MR. DAVIS: Thank you.

18 Q. (By Mr. Davis) Last situation I want to talk to you
19 about is the offense of murder. Remember, capital murder is
20 always an intentional murder plus something else. Could be
21 the intentional murder of a child younger than 6. It could
22 be the intentional murder of a police officer. In this case
23 it's the intentional murder of Bertie Cunningham while in the
24 course of committing a kidnapping or robbery. You join those
25 two things together, you get a capital murder.

1 Now, first of all, let me tell you in this case or
2 ask you if you found out in this case or if it turned out
3 that Ms. Cunningham was an 80-year-old woman -- I want you to
4 assume for a moment Ms. Bertie Cunningham was 80 years old at
5 the time of her death, would you still be able to be fair and
6 impartial? The reason I ask that is this. We don't want
7 jurors who will make decisions based solely upon sympathy or
8 their emotions. We want jurors to be able to look at the
9 evidence on guilt/innocence, punishment, look at all of it,
10 consider it, and then make your decision. It would be proper
11 perhaps to consider the victim's age on punishment. That
12 would be very proper. But I guess primarily on
13 guilt/innocence could you still look at all the evidence
14 fairly and impartially and decide whether this man is guilty,
15 even if the victim turns out to be 80?

16 A. I believe I could.

17 Q. Secondly, on murder case -- let's say that you have
18 just a murder case, not a capital murder case. Let's say
19 there's an intentional murder of somebody for whatever
20 reason, range of punishment would be different. It would be
21 5 years in the penitentiary up to 99 years or life in the
22 penitentiary. The key here is to have a open mind to that
23 full range of punishment, understanding -- again, we can go
24 through a lot of examples here, but the key is this, every
25 defendant is different, their backgrounds, their characters

1 are all different, they're unique. I can assure you, having
2 tried a bunch of these, they're all different.

3 Secondly, the facts and circumstances of every crime
4 are different. The reasons why they're committed, who
5 they're committed against, the relationship, the rest of it,
6 it's all different. I might be able to give you examples of
7 things that are intentional that might just shock you,
8 intentional meaning it's no accident. It's not negligence.
9 It's not self-defense. It's not insanity. You intend to
10 kill somebody for whatever reason. It could be motivated by
11 love or concern or hatred or greed, but you do that. You're
12 facing that kind of situation.

13 Could you listen to all the evidence, weigh it all
14 about the offense, about the defendant, and give anything
15 within that range of punishment if you thought it was
16 proper? And that means this, and I'll put it to you
17 bluntly. Even if you found that someone intentionally took
18 another human life, could you give something as low as 5
19 years in the penitentiary, if you found after you heard all
20 the evidence that you thought that was the right thing to
21 do?

22 Now, you may sitting there right now saying I can't
23 envision that situation. I don't know what the facts would
24 be. It might be a rare day when that happens. We don't ask
25 you to tell us what kind of case you would do that on.

1 That's the good news. All we ask you to do is to say if you
2 saw that case, okay, and you thought 5 years was the right
3 thing to do, could you follow your convictions and actually
4 give 5 years?

5 A. I believe I could.

6 Q. Sometimes people say, you know, 5 years is just too
7 little for killing. I don't care if I hear the facts or the
8 circumstances. Obviously, they aren't qualified because
9 they've already closed off their mind to part of the range of
10 punishment.

11 And I hear you saying, I don't know what it would
12 take, but I'm open to the proposition that the case may be
13 out there someplace. And if I hear it, I will give it. Same
14 on the high side. If I hear a maximum case, I can give the
15 maximum, right?

16 A. Yes.

17 Q. Ms. Boales, I think my time is up. Do you have any
18 questions for me, maybe something we went over a little
19 quickly, or maybe it's something I just didn't even get to
20 that you've been waiting here for 30 minutes for me to ask
21 you?

22 A. No, I don't believe so.

23 Q. I thank you for your time. I appreciate your
24 answers.

25 THE COURT: Ms. Boales, do you want to take a

1 stretch break, go to the rest room, or --

2 VENIREPERSON: No, I'm fine.

3 THE COURT: -- cup of water, or are you ready
4 to continue?

5 VENIREPERSON: Yes, sir.

6 THE COURT: You're the boss. You ready to
7 go?

8 VENIREPERSON: Yes, sir.

9 THE COURT: We'll continue with the Honorable
10 Jennifer Balido.

11 Ms. Balido.

12 MS. BALIDO: Thank you, Judge.

13 Cross-Examination

14 By Ms. Balido:

15 Q. Ms. Boales, my name is Jennifer Balido, as the Judge
16 told you. And along with Mike Byck and another lawyer by the
17 name of Jane Little, we represent Jedidiah Murphy who's the
18 accused in this case.

19 I'm going to ask you about some questions about some
20 things that you put on your questionnaire and also about some
21 of the answers that you gave Mr. Davis. If you have any
22 questions or don't understand kind of where I'm going, I tend
23 to over talk a little bit you so I may confuse you more than
24 I help you. So let me know and we'll try to get it all
25 straightened out. Okay?

1 Tell me a little bit about when you were at the
2 University of Auburn in Montgomery studying criminology.
3 What all did you study?

4 A. I studied constitutional law and criminology and
5 recidivism in the penitentiary system. I was doing it as a
6 course to try and become a paralegal. We had moved to
7 Auburn, and I was trying to get out of education at the time,
8 teaching.

9 Q. Okay.

10 A. And my husband was going to school full time as
11 well, so --

12 Q. All right. Did you ever -- after studying
13 criminology, did you ever yourself try to be a police officer
14 or try to go into that kind of field?

15 A. No.

16 Q. But you said that your husband did?

17 A. Yes, he did.

18 Q. Okay. Where was that?

19 A. It was in Killeen, Texas. It was before we moved to
20 Alabama. He was a police officer for six months, and then
21 received a job offer that was better suited to the family
22 situation we were in.

23 Q. Okay. Because being a police officer is kind of
24 hard to be -- the family aspect of being a police officer is
25 hard.

1 A. Exactly. The hours were not conducive to a good
2 family life for us at that time. We had a 2-year-old
3 daughter, and we were trying to have another baby at the time
4 as well.

5 Q. Okay. Did he ever do any kind of part-time security
6 work or anything like that after that?

7 A. He did. In Alabama he was security for a chicken
8 processing plant in Alabama part-time to help pay for school.

9 Q. Okay. Any other law -- you said that your brother
10 or your brother-in-law is a state trooper?

11 A. Yes, he is.

12 Q. Where is that?

13 A. In Houston.

14 Q. I'm trying to make a couple of notes, just a second.

15 Let me ask you a little bit just about police
16 officers because, you know, the type of case that we're
17 talking about -- and then also the witness list that you've
18 had a chance to look over has a number of police officers'
19 names on it.

20 Do you think that all police officers are truthful?

21 A. I believe all police officers, like all humans, try
22 to be as truthful as possible.

23 Q. Okay. And since they're like all humans, they
24 are -- they're just as fallible as other people?

25 A. I believe so, yes.

1 Q. Okay. Do you think that you would believe a police
2 officer -- well, let me put it a different way. Do you think
3 that a police officer just simply because they are police
4 officers are more credible than your just run-of-the-mill
5 citizens?

6 A. Honestly, no.

7 Q. Okay. When you studied about constitutional law,
8 did y'all study about the death penalty and those sorts of
9 things and protections and all that kind of stuff?

10 A. You know, to be honest, I hardly remember the course
11 at all.

12 Q. Okay.

13 A. It was a quarter course. I took it. I haven't even
14 looked at it since, so I don't remember much about it. It
15 was 16 years ago.

16 Q. Okay. Let me ask you specifically about what you
17 put down on your questionnaire. You stated that the best
18 argument in favor of the death penalty is that it's used as a
19 deterrent for criminal acts and punishment for the worst
20 crimes. And then you said what's the best argument in
21 opposition of the death penalty, if it was a true deterrent,
22 then there would be anyone to put to death. I don't know if
23 I understood --

24 A. In other words, if it was a true deterrent, then
25 there wouldn't be any reason to have a death penalty because

1 nobody would do anything that would cause that penalty to be
2 enforced.

3 Q. Okay. All right. And then also you -- you
4 mentioned that -- you felt like the prison system is -- in
5 Texas is not utilized effectively when prisoners are released
6 at 95 percent capacity rather than a hundred percent. Tell
7 me where you kind of got your opinion and kind of facts
8 behind it.

9 A. For a long time in the news it was related that when
10 the court had a ruling that when the prison system reached 95
11 percent, it was considered at full capacity and prisoners
12 were being released at that point. And to me, it didn't make
13 any sense. If it was only 95 percent, why did we leave 5
14 percent empty before we started letting people go? I would
15 assume that you would want a hundred percent before you
16 started releasing.

17 Q. And what is your feeling about the prison system and
18 the way that it's run? Do you think that they're -- do you
19 think that people who are in the prison system have too many
20 rights or too many opportunities, that they watch TV too
21 much, they just sit around and not do anything, or what's
22 your kind of feeling?

23 A. You know, I've heard so many differing things, I
24 really can't form a valid opinion because I don't know what's
25 true and what's not. You know, I've heard some stories that

1 that's what they do, they sit around, they exercise all day,
2 they don't do anything. I've heard others where, you know,
3 they have jobs, they work, so I really don't know which way
4 to go because I don't know what's true. I haven't ever been
5 there. I haven't looked at it. I don't know.

6 Q. Okay.

7 A. So I can't -- I can't make a true statement on that.

8 Q. Okay. Let me talk to you a little bit specifically
9 about when we're talking about this case, when we're talking
10 about a capital murder case. Years ago when we were talking
11 about a death penalty case, jurors were kind of faced with an
12 impossible question to answer fairly, I would say. In the
13 fact that they had the choice between either life
14 imprisonment, which no one really knew what that meant. I
15 mean, it could mean, you know, just like you hear horror
16 stories. It could mean 5 years, it could mean 7 years. If
17 the prison is full, it could mean tomorrow. I mean -- and
18 then also on the other hand they had the option of death by
19 lethal injection which I think everybody kind of knows what
20 that means. And luckily the legislature stepped in, and
21 because the courts wouldn't do it, and they said that jurors
22 have the right to know that on a capital murder case that
23 life confinement in prison means 40 calendar years before the
24 possibility of parole. And that doesn't mean they are going
25 to get parole. That doesn't mean they are going to live 40

1 years. That just means that they're going to have to spend
2 40 calendar years day-for-day, year-for-year before they're
3 eligible for parole.

4 But back before we had this law, you were kind of
5 placed as a juror in the situation of either death by lethal
6 injection or life imprisonment, whatever that means. Okay.
7 Now that we have this law, and you know as a juror that life
8 confinement in prison is at least 40 calendar years.

9 Do you think when they're talking about death
10 penalty cases that both the option of the death penalty by
11 lethal injection and 40 calendar years in the penitentiary
12 are both adequate punishment alternatives?

13 A. Meaning the minimum of 40?

14 Q. Meaning the minimum of 40?

15 A. Yes, I think I do.

16 Q. Okay. Do you think if you had your druthers, if you
17 could make your -- make the law in the State, would you
18 rather see it be a situation where it's a possibility of life
19 without parole?

20 A. As a third option?

21 Q. As a third option?

22 A. Yeah, that would be acceptable.

23 Q. Okay.

24 A. Because again, it goes with the 5 to 99. You'd have
25 to weigh everything and see what fit.

1 Q. Okay. And so you could see not telling -- not
2 asking you to write anything in stone, but you can see a
3 situation with the law that we have now where if you thought
4 the case -- that this was such a case that 40 years -- that a
5 40-year life confinement sentence was appropriate, you could
6 assess that in this case?

7 A. Yes.

8 Q. Okay. And if you felt like the death penalty should
9 be imposed, that you could assess that as well?

10 A. Yes.

11 Q. Okay. And basically it's important to kind of talk
12 about things that way because as the Judge told you
13 yesterday, he's not sitting as a thirteenth juror. Once
14 everybody makes a decision over there about the facts and how
15 to answer Number 1 whether or not he's guilty or not guilty,
16 and Number 2, how to answer these special issues, there's
17 nobody else that's going to come along and say, you know, oh,
18 they were wrong, they should have put more stress on, you
19 know, his sexual abuse as a child or something like that.
20 There's nobody that's going to do that. That's solely up to
21 the jury's decision.

22 You understand that?

23 A. Yes.

24 Q. Okay. Let me talk to you a little bit about what --
25 what Mr. Davis was talking to you about, and talk just for a

1 short time about the guilt/innocence phase of this trial.
2 Because sometimes we get caught up in the special issues and
3 we forget to look at the fact that the State's got to prove
4 its case beyond a reasonable doubt and that the defendant is
5 presumed innocent unless and until the State can do that.
6 And it kind of bothers some jurors sometime that, you know,
7 the question that we're talking about in this courtroom is
8 not whether or not Mr. Murphy did this crime. It's whether
9 the State can prove it beyond a reasonable doubt.

10 Can you see how that's the kind of question that's
11 being asked?

12 A. Yes.

13 Q. And sometimes that gets caught in people's throats
14 and it kind of bothers them. But I think you're kind of
15 familiar enough with the system that you understand that's
16 what we're looking at. And when we're talking about proof
17 beyond a reasonable doubt, we're talking about -- let's say a
18 doubt based on reason and common sense after looking at all
19 the evidence.

20 Can you agree with me there? When we're talking
21 about a reasonable doubt?

22 A. Yeah. I don't know the legal definition.

23 Q. Well, really there is no legal definition. It's
24 kind of up to whatever you think it is. But I can tell you
25 what it's not basically. It's not proof by a preponderance

1 of the evidence which is about 50 or a little over 50
2 percent. That's the kind of proof that's necessary in a
3 civil case. And it's not -- like if the State of Texas
4 through their Child Welfare Department was trying to take
5 away your child, they would have to -- the legal of proof
6 that they would have to rise to is clear and convincing
7 evidence, which is more than a preponderance of the evidence.
8 You know, if they're trying to take your child away,
9 something that important.

10 But proof beyond a reasonable doubt is more than
11 that. It's more than a preponderance of the evidence. It's
12 more than clear and convincing evidence. It's beyond a
13 reasonable doubt, that they eliminate all reasonable doubts
14 from your mind.

15 A. Okay.

16 Q. Okay. So can you hold the State to its burden of
17 proof in that case?

18 A. I believe so.

19 Q. Okay. And what they have to prove to you
20 specifically is the things that are sitting there on that
21 indictment that's in front of -- in front of you. Basically
22 kind of just as a summary what that basically says is they've
23 got to prove to you on or about a certain date in Dallas
24 County, Texas, that Mr. Murphy caused the death of Ms. Bertie
25 Cunningham in the course of either a robbery or a kidnapping,

1 and did so by either shooting her in the head or drowning her
2 in water. Okay. Those are the things that they have to
3 prove beyond a reasonable doubt.

4 And what I want to talk to you specifically about is
5 what we call the mental state which is that he intentionally
6 called the death of Bertie Cunningham. Okay. Because Mr.
7 Davis talked to you a little bit and -- you know, that's what
8 we're dealing with right here. We're not dealing with an
9 accident. You know, I could bring a gun, pull out a gun, be
10 showing it to Mr. Byck and it accidentally goes off. I did
11 not have the specific intent to kill him. I could be tired
12 of all his snorting and sniffing over here and I could pull
13 out a gun and try to shoot his nose off and try to injure
14 him, maybe, and accidentally kill him, you know. So I
15 probably should have known that I shouldn't have done that,
16 but that was just kind of a mistake on my part because, you
17 know, I wasn't trying to hurt him -- I mean, I was trying to
18 hurt him, but I wasn't trying to kill him. But if I actually
19 pull out a gun and stick it up to his chest and just pump a
20 round into him, wanting to kill him, not scare him or hurt
21 him, but kill him, that's the kind of specific intent to kill
22 that we're -- we're talking about in this case.

23 Can you hold the State to its burden of proof on
24 that?

25 A. I believe I can.

1 Q. Okay. Let me ask you specifically, do you think
2 when we ask this on the questionnaire, do you think
3 eyewitness testimony is infallible?

4 A. No. Not always, no.

5 Q. All right. I wonder if you have heard about the
6 recent case that was in the Dallas Morning News about a
7 Monday who just got released from prison after 15 years. He
8 was -- a woman was raped at a college. She said it was an
9 African American man in a green jacket. Soon after they
10 found an African American man in a green jacket, brought him
11 by, and she identified him as the person that perpetrated
12 this crime on her. And then later on down the road DNA comes
13 along, gets better, we have some DNA tests, and it proves
14 that it's not him. I mean, have you read about cases like
15 that in the news?

16 A. I haven't heard about that specific case, but I have
17 heard of cases --

18 Q. Okay.

19 A. -- where that has happened.

20 Q. And, you know, I'm sure that that girl walked in and
21 identified him just as clear as a bell and I don't fault the
22 jury on any kind of cases like that, because I'm sure the
23 victim thought that she was very -- being very truthful. But
24 cases like that do happen sometimes.

25 Let me also ask you, when we're talking about this

1 type of case and we're talking about obviously a murder case,
2 so you can assume that you're going to see some pictures from
3 autopsies and that sort of thing. And additionally, when
4 we're talking about the manner and means that the State has
5 alleged the way Ms. Cunningham died, shooting in the head
6 and/or drowning in water, I think that we can probably assume
7 that the pictures are going to be a little graphic when we're
8 talking about those sorts of things.

9 Do you think that you can judge graphic pictures for
10 their evidentiary value and not be swayed by emotion or some
11 sort of emotional reaction that you might have to those?

12 A. I believe I could.

13 Q. Okay. It's not going to be pretty, and it's not
14 going to be fun, I can tell you, because I've seen them.

15 Let me kind of move away from the guilt/innocence
16 phase and talk to you again about Special Issue Number 1.
17 And as we've talked about it, before you can get to Special
18 Issue Number 1, you have to find that he's guilty of capital
19 murder. Not murder, but capital murder in the course of
20 either a kidnapping or a robbery. And, you know, there are a
21 lot of people who say, you know, we're talking about this
22 case about -- about Mr. Murphy causing the death of Ms.
23 Cunningham and either shooting her in the head or drowning
24 her in water, and it's done either to try to take her
25 property through robbing her or kidnapping her. Okay.

1 When we're talking about that kind of case, do you
2 think that there is a way that you could ever say that
3 someone that could do such a thing would not be a continuing
4 threat to society?

5 A. Again, I'd want to know more background information,
6 what were the circumstances, things like that.

7 Q. Okay.

8 A. But, yeah, I think you have to look at everything
9 before you can make a decision like that.

10 Q. And when you see the word "probability" -- well,
11 first let me kind of tell you this. On Special Issue Number
12 1 the State has the burden of proof. And there is that word
13 "probability" which we've kind of talked about what that
14 means. But they've got to prove beyond a reasonable doubt
15 that there is a probability. Okay? So there's the burden of
16 proof that they have to prove a probability. Sometimes
17 people kind of get confused and say they have to prove a
18 simple probability.

19 If you had the choice of substituting a word or a
20 phrase for probability, what would that word or phrase be?

21 A. Definite likelihood.

22 Q. Okay. And those are such things that -- it's kind
23 of hard because probability kind of encompasses a large
24 amount of things. Let's say you that found Mr. Murphy guilty
25 of capital murder in this case and you've answered Special

1 Issue Number 1 yes, that there is a probability that he would
2 commit further -- commit criminal acts of violence that would
3 constitute a continuing threat to society. And you've
4 answered that question yes. Okay. So you feel like he's a
5 continuing threat.

6 Do you think that there is a situation after
7 answering that question yes and finding him guilty of this
8 sort of crime that you think there is anything that would be
9 sufficiently mitigating to allow him to live instead of die?

10 A. Again, I would want to know more information.

11 Q. Okay.

12 A. You know, like I told them, you have to look at
13 everything, you can't look at just what he did then.

14 Q. Okay. And I think what -- what this question is
15 trying to get to is, is, you know, sometimes people say that
16 people try to present mitigating circumstances, trying to
17 excuse their behavior or to justify their behavior. And
18 that's not really it at all. I mean, if there was a legal
19 justification or a factual justification or a legal excuse or
20 factual excuse, you know, it would be presented in a
21 situation that the person may be not guilty. And that's not
22 what we're talking about.

23 But I guess my mamma always used to say that you are
24 who you grow up to be. So I guess that kind of takes into
25 account how you grew up and who you are because of how you

1 grew up.

2 Can you see how that question kind of answers that,
3 or asks that?

4 A. Yes.

5 Q. Okay. Let me kind of give you an example of -- that
6 we've been kind of using to kind of see how people feel about
7 certain things when we're talking about Special Issue Number
8 2. Let's suppose that Mr. Byck and I are nonidentical
9 twins. We were born of the same mother, have relatively the
10 same I.Q. Our mother abused drugs and alcohol when we were
11 babies -- I mean, when we were inside her womb. And once we
12 are born, then we're just too much than she can handle. And
13 so she adopts us out to two separate families. Mr. Byck is
14 adopted into a family that has two parents, very loving
15 parents. He's read to. Love is something that is shown in
16 his household. Good schools. Siblings that love him. And
17 any issues that may be remaining from fetal alcohol syndrome
18 or drug abuse by the mother are taken care of by the
19 pediatrician, good medical care. They kind of take care of
20 all the problems when they crop up, that sort of thing. He
21 graduates from high school and goes to college, gets a good
22 education.

23 I, on the other hand, am not so lucky. I'm adopted
24 into a family, it may be single parent. There may be
25 multiple parents that come and go. There is really no

1 medical care, no -- no real identification of any problems.
2 I'm just basically kind of termed a bad kid. Love is not
3 something that's spoken or shown in my household. There's,
4 in fact, violence inside the household, violence is basically
5 all we watch on TV. Physical abuse, mental abuse, from both
6 the parents and the siblings. There is some sexual abuse at
7 different points in my life. I go to school, you know, and I
8 kind of make okay grades, but never quite catch that one
9 teacher that can really kind of change a child's life as we
10 know that can happen. And I graduate from high school and
11 kind of meander from job to job.

12 As luck would have us or I guess as bad luck would
13 have it in our -- in this example, Mr. Byck and I decide to
14 rob banks on opposite corners of downtown Dallas. We walk in
15 with a gun. We threaten the people inside the bank. We get
16 money, and we walk out. We're immediately arrested. And of
17 course we don't know that each other is doing this because we
18 haven't seen each other. We're immediately arrested, and
19 we're put on trial and found guilty of aggravated robbery.

20 Now comes the point of sentencing. Do you think
21 that we should be sentenced the same or differently for the
22 crime that we committed?

23 A. I'd have say the same.

24 Q. Okay. And so it's kind of -- you do the time, you
25 do the crime -- I mean, you do the crime, you do the time

1 sort of situation?

2 A. Yeah. For the most part, yeah.

3 Q. Do you think -- let's say that we killed somebody
4 inside the bank and so now we're charged with capital murder
5 and you're faced with these two questions. You've already
6 found us both guilty separately of capital murder. Both
7 Special Issue Number 1 for whatever reason you believe we're
8 going to be a continuing danger to society, do you think that
9 the issues that you talk about in Special Issue Number 2 are
10 going to be different because our backgrounds are different?
11 I'm not trying to get you to say the results are different,
12 just do you think you would consider different things when
13 you're considering Special Issue Number 2?

14 A. Possibly. I can't give a definite answer.

15 Q. Okay. Well, that's fine. What kind of effect do
16 you think in talking about Special Issue Number 2 -- do you
17 think that the defendant's --

18 MS. BALIDO: Thank you, Judge.

19 Q. (By Ms. Balido) Do you think the defendant's
20 character and background is a consideration that you would
21 need to look at in answering Special Issue Number 2?

22 A. Yes, I believe you have to.

23 Q. Okay.

24 A. Yeah.

25 Q. And then also the circumstances of the offense?

1 A. But you didn't go into character, you just went into
2 background.

3 Q. Okay. So I guess you would want to -- well --

4 A. I would want to know more about what you were like
5 as a person as well. I'd want to hear some things about
6 that.

7 Q. Okay. Like school records or --

8 A. Yeah.

9 Q. -- those sorts of things?

10 A. Yeah, history.

11 Q. To try to get a personal history of what --

12 A. Exactly.

13 Q. All right.

14 A. Exactly.

15 Q. Okay. And that's probably my fault for not making
16 that kind of more clear.

17 Do you think that the personal moral culpability of
18 someone is affected by their character or their background or
19 the things that have happened to them in their lives?

20 A. I believe it can be, yes.

21 Q. Okay. I just have a few more minutes, and let me
22 kind of -- just kind of end up by talking about some basic
23 general things. I see that you live in Garland?

24 A. Yes.

25 Q. Okay. Do you have any inkling of any publicity or

1 any kind of news stories that you might have heard about this
2 case?

3 A. I travel quite a bit.

4 Q. Okay.

5 A. And I don't read the newspaper.

6 Q. Okay.

7 A. So I don't know anything about it.

8 Q. All right. Okay. Well, as you can see on the
9 witness list, there are a number of Garland police officers
10 involved. And so, you know, it's likely to -- and so since
11 you're from Garland, I just thought I'd ask if you had any
12 kind of knowledge or heard anything on the radio or TV about
13 it.

14 A. No.

15 Q. Let me just kind of finish up by saying this. We
16 talk about the jury being kind of one group of people. And
17 that's not really what it is. It's a group, yes, but it's
18 also 12 individuals that make up that group. And so there
19 may be a situation that you get back into the jury room, and
20 some people, you know, maybe six of you think, well, the
21 State didn't prove its case beyond a reasonable doubt because
22 they -- because they didn't prove that it happened in Dallas
23 County, Texas. And the other six may say, well, the State
24 didn't prove its case beyond a reasonable doubt because they
25 proved stabbing instead of either drowning or shooting. And

1 that kind of sounds farfetched kind of from here, but it --
2 when you're looking at it kind of abstractly, but what you
3 still agree on is that the State didn't prove their case.
4 You know, there may be an inkling in the back of your mind
5 that the State just didn't quite get there. And that's an
6 individual thing, but everyone agrees or maybe three or four
7 people agree that there is just no -- the State hasn't proved
8 its case beyond a reasonable doubt. So those are things that
9 you don't have to -- you don't have to agree on specifics,
10 but just that there is reasonable doubt. And that kind of
11 goes along the same with sufficient mitigating circumstances
12 or a circumstance. Something may be mitigating to you.
13 There may be something that just -- you know, once you hear
14 it, you say, okay, I've heard it now. He deserves a life
15 sentence instead of a death sentence. And there may be
16 somebody else that's heard something totally different. It
17 may have even come from, you know, the case in chief, just
18 something that happened that he may think that's mitigating.
19 And even though y'all don't agree on what is mitigating,
20 y'all both see there's a mitigating circumstance so you don't
21 have to agree on that sort of thing, either.

22 And also, I would just like to kind of make you
23 aware of kind of the situation that has happened in the past,
24 you know. We're talking about some serious stuff here.
25 We're talking about the death of an individual, someone has

1 already died. And then we're also talking about whether Mr.
2 Murphy is going to live or die. And that, of course, brings
3 forth a lot of emotions on a lot of people. And sometimes
4 there are people with strong personalities that prey on those
5 emotions and emotions of people that might be more soft
6 spoken than you are or more -- not as strong of a personality
7 as you are. And if that happens and there is some
8 domineering or some hard sales tactics that are really kind
9 of outside the confines of the jury instructions, I'd hope
10 that you'd try to deal with that and just make sure everyone
11 could have their own voice.

12 Can you agree that you'll do that?

13 A. Oh, yes.

14 Q. Okay. If it gets just totally out of hand which I
15 don't expect that it will, but sometimes it does, and you
16 don't feel like that y'all can handle on your own, I'd ask
17 that you just ask the bailiff to alert the Judge that that
18 sort of thing is going on back in the jury deliberation room?

19 A. Yes.

20 Q. Okay. Ms. Boales, I appreciate it. I appreciate
21 your time and the thoughtful way that you filled out your
22 questionnaire. You'd be amazed how many blanks we see on
23 these questionnaires, and I do appreciate that you took the
24 time to fill out as much as you could and to answer our
25 questions fully today. Thank you.

1 VENIREPERSON: Thank you.

2 THE COURT: Ms. Boales, excuse you in the
3 company of the bailiff momentarily. The attorneys will
4 confer with their co-counsel, and then they will ask me
5 whether they think you should be continued under
6 consideration and I'll make the final consideration.

7 VENIREPERSON: Okay. Thank you.

8 THE COURT: If you'd retire with the bailiff.
9 (Venireperson leaves the courtroom.)

10 (State no challenge for cause - Ms. Boales)

11 MR. DAVIS: The State has no challenges for
12 cause.

13 (Defense no challenge for cause - Ms. Boales)

14 MS. BALIDO: Defense has no challenge for
15 cause.

16 (Venireperson returned to courtroom.)

17 (Connie Boales Prospective Juror No. 27)

18 THE COURT: Ms. Boales, you remain under
19 consideration as a prospective juror.

20 VENIREPERSON: Okay.

21 THE COURT: With your permission, at the
22 request of the attorneys, I'm going to ask that you allow Ms.
23 Madore, the bailiff to your left, to take a Polaroid picture
24 of you for the purpose only of assisting the attorneys once
25 we reach this level of 48 qualified prospective jurors, will

1 exercise their peremptory challenges. We talk to -- they
2 talk to an awful, awful lot of people. We've been at this
3 for a while. Kind of starts to blend in from time to time
4 with regard to faces and information. Once they -- the jury
5 has been selected, the Court Administrator, Ms. Daily, who
6 has come in, will shred it. Won't even be made a part of the
7 trial record, so I don't want you to worry about it being
8 made a part of the trial record for any purpose whatsoever.

9 I've asked Ms. Daily to come in also and confirm
10 your home and work phone number. If they should change
11 before she calls you back with the ultimate decision whether
12 you are or are not one of the 12 jurors, if you would be kind
13 enough to give her a call so we can keep up with you as need
14 be.

15 Also, obviously you're going to have to tell your
16 spouse and family and employers that you remain under
17 consideration as a prospective juror. Do not, however,
18 please, please, contact the Dallas Morning News and get back
19 copies of the newspapers that had stories about the incident
20 which forms this prosecution.

21 Have you any questions for us?

22 VENIREPERSON: Don't believe so.

23 THE COURT: All right. Thank you.

24 Ms. Daily, Ms. Boales.

25 Let's take a 10-minute break, and then we'll proceed

1 with Mr. Roberts.

2 (Recess of process.)

3 THE COURT: Mr. Roberts, good afternoon.
4 Welcome back.

5 VENIREPERSON: Thank you.

6 THE COURT: You're welcome. Sorry to keep you
7 waiting, but we haven't been exactly twiddling our thumbs.

8 VENIREPERSON: I was busy.

9 THE COURT: You're working a crossword
10 puzzle. We see that's one of your hobbies.

11 Ask that you raise your right hand and be sworn in
12 again, please.

13 Mr. Roberts, you solemnly swear -- you may be seated
14 if you wish.

15 VENIREPERSON: Oh --

16 (Venireperson additionally sworn.)

17 VENIREPERSON: I do.

18 THE COURT: Thank you. You may lower your
19 hand, Mr. Roberts.

20 A little over 24 hours ago, Mr. Roberts, I
21 reintroduced or I introduced those whom we see seated at the
22 counsel tables. Allow me though to refresh your memory and
23 reintroduce them momentarily, if I may.

24 Beginning to the far left, one of the Senior
25 Prosecutors in the Dallas District Attorneys Office, the lead

1 prosecutor in this case, the Honorable Greg Davis.

2 MR. DAVIS: Good afternoon.

3 THE COURT: Seated next to him is co-counsel
4 at the present time. This lady occupies the role of Chief
5 Prosecutor in this the 194th District Court, the Honorable
6 Mary Miller.

7 MS. MILLER: Good afternoon.

8 THE COURT: Mr. Roberts, moving on to the
9 defense table, we begin first with one of the defense
10 attorneys, the Honorable Jennifer Balido.

11 MS. BALIDO: How are you, Mr. Roberts?

12 THE COURT: Seated next to Ms. Balido is one
13 of the other defense attorneys representing the defendant.
14 This man is a board certified criminal law specialist, so
15 designated by the State Bar of Texas, experience, training,
16 and having passed a very difficult examination. Gentleman's
17 name is Michael Byck, B-y-c-k.

18 MR. BYCK: Mr. Roberts.

19 THE COURT: Seated next to Mr. Byck, opposite
20 Ms. Balido, is the accused, the defendant, if you will,
21 Jedidiah Isaac Murphy.

22 THE DEFENDANT: Good afternoon.

23 THE COURT: There is a third defense
24 attorney. Her name is Jane Little. She's also a board
25 certified criminal law specialist. However, as we are joined

1 one another this afternoon in the courtroom, she is out
2 working with regard to some matters of interviewing some
3 witnesses that she anticipates presenting to the jury once
4 the testimonial stage of the trial begins.

5 Are you ready to begin?

6 VENIREPERSON: Yes, sir -- Your Honor, I
7 mean.

8 THE COURT: The attorneys are ready as well,
9 Mr. Roberts. We'll begin with the State and the Honorable
10 Greg Davis.

11 Mr. Davis, Mr. Roberts.

12 MR. DAVIS: Thank you. May it please the
13 Court.

14 JOHN ROBERTS
15 was called as a venireperson by the Court and, after having
16 been first duly sworn, was questioned as follows:

17 Voir Dire Examination

18 By Mr. Davis:

19 Q. Mr. Roberts, how are you today?

20 A. Fine. Thank you, sir.

21 Q. Mr. Roberts, I'm going to have some time to talk
22 with you today and just remind you what the Judge has told
23 you previously. There are no right or wrong answers. Most
24 of the questions that I'm going to ask you deal with how you
25 feel about something, what your opinions are. As long as you

1 tell us how you honestly feel about a subject, that's all.
2 that we as attorneys can expect from you. Okay?

3 Mr. Roberts, let me first of all just ask you -- I
4 see that you're in favor of the death penalty from your
5 questionnaire. Can you tell me why you're in favor of death
6 penalty?

7 A. I'm in favor of the death penalty?

8 Q. Yes, sir. Or are you in favor of the death penalty?

9 A. Well, if I put it on my questionnaire, apparently
10 it's true. But I don't have a blanket feeling that I'm in
11 favor of the death penalty. You see, in a society we live
12 in, I believe life should be respected. That is, from the
13 criminal towards the victim, as well as the Court toward the
14 criminal. So life should be respected both ways. But
15 however in life -- in the life that we live in, if a person
16 says that they have a flat out -- I see on television people
17 flat out says, oh, get rid of the death penalty, we don't
18 want the death penalty for anyone, they say. You know, some
19 of the people, you know, talking. I say we should have a
20 respect for life because in our life it happens rarely, but
21 it happens that sometimes people or things or animals go mad.

22 When I was a child, up and down my street there was
23 a dog that went mad. He walked up and down the street with
24 stuff coming out of his mouth, you know. I can't even --
25 some people take their hand and do a fly, you know, bam, or

1 they take their hand and do an ant, bam. I can't do that.
2 They take their hand or foot and do a roach. I can't do
3 that. My father once told me to go out and kill the
4 Thanksgiving turkey. You put him under a big tub and stick
5 his head out and chop his head off. Well, I can't do that
6 either, but I have the realization that in society I can't
7 even kill a bug. But I have the sense to know that sometimes
8 things, animals, people, or plants go mad. And sometimes we
9 have to make the ultimate sacrifice as people and do such
10 things as we call the death penalty. Because sometimes --
11 sometimes people or things go mad.

12 Q. Okay. Thank you.

13 (Mr. Roberts Excused From Consideration)

14 MR. DAVIS: Judge, I believe we have an
15 agreement.

16 MR. BYCK: So agreed, Your Honor.

17 THE COURT: Mr. Roberts, the attorneys have
18 authorized me to inform you that we appreciate your return
19 this afternoon. You are excused.

20 VENIREPERSON: Thank you.

21 THE COURT: You're welcome.

22 (Recess of proceedings.)
23
24
25

Reporter's Certificate

STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 19th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

74145

VOLUME 32 OF 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney
Crowley Criminal Courts Building
Dallas, Dallas County, Texas 75207
Phone: 214-653-3600

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550
MS. MARY MILLER, A.D.A., SBOT # 21453200
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 2nd day of May, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer
assisted transcription.

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1 P R O C E E D I N G S

2 THE COURT: Good morning, Mr. Newman. Welcome
3 back.

4 How long has it been since you were in Perry?

5 VENIREPERSON: Last year.

6 THE COURT: Really?

7 VENIREPERSON: Yeah. Going back probably
8 sometime this summer.

9 THE COURT: I was born and raised in Waterloo.

10 VENIREPERSON: Oh, were you, really? Well,
11 good.

12 THE COURT: Would you raise your right hand,
13 please?

14 (Venireperson additionally sworn.)

15 THE COURT: Thank you. Mr. Newman, I have
16 previously introduced, but it's been a couple of days. Let
17 me refresh your recollection and reintroduce those whom we
18 see seated at the counsel tables.

19 To the far left, Mr. Greg Davis.

20 MR. DAVIS: Good morning.

21 VENIREPERSON: Senior Prosecutor with the
22 Dallas District Attorneys Office, lead prosecutor in this
23 particular case.

24 He is assisted by co-counsel, at the present time
25 Chief Prosecutor assigned by District Attorney Bill Hill to

1 this the 194th District Court, the Honorable Mary Miller.

2 MS. MILLER: Good morning.

3 VENIREPERSON: Good morning.

4 THE COURT: Moving on to the next table, we
5 begin first with one of the three defense attorneys, a board
6 certified criminal law specialist, so designated by the State
7 Bar of Texas by experience, training, and successfully
8 passing a rather difficult examination, the Honorable Michael
9 Byck.

10 MR. BYCK: Good morning, Mr. Newman.

11 VENIREPERSON: Good morning.

12 THE COURT: Next to Mr. Byck is one of the
13 other attorneys representing the defendant, the Honorable
14 Jennifer Balido.

15 MS. BALIDO: Good morning.

16 VENIREPERSON: Good morning.

17 THE COURT: Seated next to Ms. Balido,
18 opposite Mr. Byck, is their client, the accused, the
19 defendant, if you will, Jedidiah Isaac Murphy.

20 THE DEFENDANT: Good morning.

21 VENIREPERSON: Good morning.

22 THE COURT: There is a third defense attorney,
23 Jane Little, also a board certified criminal law specialist,
24 not with us this morning. She is addressing other matters
25 with regard to this case, other than jury selection as we

1 speak.

2 VENIREPERSON: All right.

3 THE COURT: Mr. Newman, recall if you will, I
4 mentioned to you a couple of days that there will be no right
5 or wrong answers to the attorneys' questions. You will know
6 before you leave us this morning whether or not you remain
7 under consideration as a prospective juror in the case.

8 Are you ready to go?

9 VENIREPERSON: Sure.

10 THE COURT: All right. We'll begin as we are
11 obligated by law to do with the State in the Honorable Greg
12 Davis.

13 Mr. Davis, Mr. Newman.

14 MR. DAVIS: Thank you. May it please the
15 Court.

16 RANDALL NEWMAN
17 was called as a venireperson by the Court and, after having
18 been first duly sworn, was questioned as follows:

19 Voir Dire Examination

20 By Mr. Davis:

21 Q. Good morning again, Mr. Newman. How are you?

22 A. I'm doing fine.

23 Q. Mr. Newman, for the next few minutes, I'll have a
24 chance to speak with you about some of the issues involved in
25 this case. Just to reiterate what the Judge had previously

1 told you, there are no right or wrong answers. Most of these
2 questions deal with how you feel about an issue, what your
3 opinions are. I've done enough of these to know that
4 everybody feels differently about these issues.

5 A. Okay.

6 Q. So as long as we know honestly how you feel, that's
7 all we really need. Okay?

8 A. Okay.

9 Q. First of all, let me just begin, and again, tell you
10 what our position is in this case because it's not going to
11 change. The State is actively seeking the death penalty
12 against Mr. Murphy. At the punishment phase I will be asking
13 you to answer these special issues yes and no which would
14 require Judge Entz to impose a sentence of death on Mr.
15 Murphy. You know -- and I have some people who come down,
16 they fill out a questionnaire, and they do honestly tell me
17 they're in favor of the death penalty, but perhaps it gets to
18 be a little bit different when you're sitting up where you
19 are --

20 A. Right.

21 Q. -- looking to be a prospective juror. And I have
22 had some jurors tell me that in the abstract that's one
23 thing. Personally they're not sure. You know, Mr. Murphy is
24 not an abstract object. He's a living, breathing human
25 being. The reality is that if the State of Texas prevails in

1 this case, there will come a day in Huntsville where he's
2 going to lie dead on a gurney as a result of the verdict
3 rendered in this particular case.

4 So if you would just -- just tell me how you
5 honestly feel about personally participating in this kind of
6 case.

7 A. That's kind of vague, but I think -- would I be able
8 to do it? Is that the question?

9 Q. Yes. Yes, sir.

10 A. Yeah, I would be able to do it.

11 Q. Okay. I know that you've told us that you are in
12 favor of the death penalty. Can you tell me -- tell me why
13 you're in favor of the death penalty?

14 A. I think it's somewhat of a deterrent. I think
15 people should pay for what they've done, if they've done it.

16 Q. Are there any cases maybe that you followed in the
17 news where you thought to yourself that may well be a death
18 penalty case?

19 A. I generally don't watch much of the news, sometimes
20 some highlights and stuff like that. Dahmers and stuff like
21 that, I think that was definitely.

22 Q. Have you always felt the same way about the death
23 penalty?

24 A. Pretty much, yeah.

25 Q. Okay. I know that you're married.

1 A. Uh-huh.

2 Q. How does your wife feel about this kind of issue?

3 A. Well, we talked about it a little bit, but she's not
4 for or against it as such, strongly so.

5 Q. Uh-huh. Okay. Let me -- let me just go through
6 some of these issues then, and let's talk about the two up
7 here on the board. This is really where the death penalty is
8 different than other kinds of felony cases. Normally in a
9 felony case if you found someone guilty, then the Judge would
10 give you a range of punishment to work with. You'd hear all
11 the evidence, then you'd decide what the proper sentence
12 was.

13 For instance, in a murder case, you'd have to set a
14 punishment somewhere between 5 years up to 99 years or life.
15 You'd actually just write in the number of years you thought
16 the proper sentence would be. But as the Judge has explained
17 in death, there's a little bit different procedure. Once you
18 find someone guilty of capital murder, we go to a punishment
19 phase. You hear other evidence if it's available, either a
20 criminal history, no criminal history, what's the person's
21 background, etcetera. Then you go to these issues.
22 Depending on how you answer them, that really dictates the
23 verdict in this particular case.

24 When you look at Special Issue Number 1, Mr. Newman,
25 can you tell me just in your own words what do you think

1 Special Issue Number 1 is asking you to do?

2 A. If he's a continuing threat, you know, that would
3 definitely -- be a probability he would commit another
4 crime. That's what it states.

5 THE REPORTER: I'm sorry, sir, I couldn't
6 understand you.

7 A. It wasn't really a good sentence anyways. If the
8 person is capable of committing another crime of this such.

9 Q. (By Mr. Davis) With -- without regards to what the
10 legal rules may be --

11 A. Uh-huh.

12 Q. -- or the rules of evidence, just forget that for a
13 moment. Can you tell me what sort of things do you think
14 would be helpful to know before you have to answer Special
15 Issue Number 1?

16 A. Pretty much everything --

17 Q. Uh-huh.

18 A. -- that deals with the case, you know, the evidence
19 and what took place and stuff like that, if the person was
20 definitely guilty or not.

21 Q. Yeah. Okay. And certainly you'd be entitled to
22 look at all the facts of this case, how was this murder
23 carried out, who was the victim, why was it carried out, what
24 was the -- what was the defendant's response after he did the
25 killing. You get to look at all of those things.

1 You know, some people would tell me maybe it would
2 make a difference, you know, as to whether these people knew
3 each other or not. Maybe they had known each other for
4 years. They had been feuding over something, and finally it
5 resulted in a murder. Maybe they had been -- maybe they'd
6 had a great relationship that somehow went sour. Maybe they
7 were strangers. Maybe this person was randomly selected to
8 be a victim. You know, was the defendant remorseful. Was he
9 not remorseful. Those are the types of things some people
10 tell me about.

11 Is that the kind of thing that you're talking about,
12 also?

13 A. Yeah, that sounds right.

14 Q. I can't go into all the facts in this case with
15 you. We want you to hear those for the first time when
16 you're a juror.

17 A. Uh-huh.

18 Q. But I can tell you or ask you this question. If it
19 turned out that the victim in this case was an 80-year-old
20 woman, would you still be able to be fair and impartial, or
21 do you think that might affect you in some way?

22 A. I don't think age would matter to me.

23 Q. All right. Certainly the age of the victim may not
24 have any bearing on guilt/innocence, whether this person
25 actually committed the offense or not, but you'd be entitled

1 to take that into account, if you wanted to, on punishment,
2 because I've had some people tell me maybe I'd want to factor
3 that in. I've had people say was the victim innocent, was
4 the victim helpless in some way. So you'd be entitled to
5 look at it that way if you wanted to.

6 Special Issue Number 1, too, would allow you to look
7 into the defendant's background and his character. Some
8 people have told me that perhaps the best indicator of the
9 future would be what he's done in the past. Is there some
10 sort of pattern that's developed over time, or perhaps this
11 man's never done anything before and this is just a blip
12 that -- an aberration if you will.

13 A. Uh-huh.

14 Q. And there's really no likelihood that something like
15 this is ever going to happen again. Do you think that would
16 be helpful to know, too?

17 A. Sure.

18 Q. When you look at -- when you look at these issues,
19 Mr. Newman, probability, it's a word that I'd like to talk to
20 you about. None of these words have legal definitions.
21 We're going to rely on your definitions.

22 A. Uh-huh.

23 Q. The legislature gave us these questions, but they
24 didn't give us definitions to go along with them. In the
25 context of Special Issue Number 1, how would you define

1 probability? What does that mean to you?

2 A. A greater chance than not that he would, or she
3 would do something.

4 Q. Okay. Criminal acts of violence. What sort of
5 criminal acts come to mind when you think of that term?

6 A. Real serious stuff, murder, rape, armed robbery.

7 Q. Okay. Yeah, some people kind of fall into a trap of
8 saying, well, criminal acts of violence, he has to do the
9 exact thing again, murder or capital murder. The law doesn't
10 require that. I think you've kind of listed some other
11 things. A lot of people tell me that criminal acts of
12 violence, regardless of the severity, has to involve another
13 person. Either that person's physically harmed in some way
14 or they're at least put in threat of harm, could be a robbery
15 or could be an assault of some sort.

16 Is that the kind of thing you're thinking of, too?

17 A. Right.

18 Q. Finally, society. Who comes to mind when you think
19 of society?

20 A. Everybody who's in the general public.

21 Q. Okay. Society could mean that. It could mean
22 people like you and I that are in the general -- general
23 population.

24 A. Uh-huh.

25 Q. The Judge has previously told you that a life

1 sentence means a person has to spend at least 40 calendar
2 years in the prison system before they become eligible for
3 parole.

4 Now, in that kind of context can you see how prison
5 may also be a part of society with regard to that question?

6 A. A part of society, but not my society as such.

7 Q. Right. See, not your society. But we're talking
8 about the defendant's society. Here's the way I like to
9 think about it. See if you agree with me. I like to think
10 of society -- the defendant's society as being anywhere he
11 may find himself, anyone he may come in contact with. That
12 may be in a prison, may be in a free world.

13 Does that make sense to you?

14 A. Uh-huh.

15 Q. Okay. A question that sometimes I'll ask would be
16 do you think people inside of prison, and it may be other
17 felons, could be guards, it could be nurses or secretaries,
18 do you think that they also have the right to be free from
19 violent crime?

20 A. Sure.

21 Q. Mr. Newman, do you have any questions about Special
22 Issue Number 1 before we go to Special Number 2?

23 A. No.

24 Q. Special Number 2, again, deals -- I think the Judge
25 has described it as the safety net. By the time you get

1 there, you're already two-thirds of the way to a death
2 sentence. You've already found the person guilty of capital
3 murder. You've already decided beyond any reasonable doubt
4 this person is going to constitute a continuing threat to
5 society. If you answer Special Number 2 no, he gets death.
6 If you answer it yes, he gets life. The law would ask you to
7 be able to go down there, look at all the evidence again,
8 decide is there something in that evidence, whatever it may
9 be, wherever it may come from, that is important enough in
10 your mind where this person should get a life sentence
11 instead of a death sentence.

12 Some people would tell me if they truly believed
13 someone is a continuing threat beyond any reasonable doubt,
14 they just couldn't justify giving him a life sentence and
15 therefore perhaps putting someone else at risk of harm in the
16 future. Other people tell me they can go ahead and go
17 through that process and look at the evidence anyway.

18 How do you feel about that?

19 A. I would definitely look to see if there was some
20 other circumstances to take into consideration that.

21 Q. All right. Can you think of any things right
22 offhand that might be important enough to spare a man's life
23 in this kind of case? Mitigating circumstances. What comes
24 to mind?

25 A. It depends on somewhat the circumstance of what

1 happened, the person that it happened to, and the
2 relationship. I guess without knowing anything, it would be
3 real hard -- how the relationship between the defendant and
4 the other person was. You know, was there some other case
5 that happened. There could have been a right reason, but
6 maybe a reason in his mind or her mind that --

7 Q. Well, let me give you an example. See if this is
8 kind of what you're talking about. This may be an extreme
9 example, but let's say that -- let's say I've got a teenage
10 daughter and I find out that a neighbor perhaps has sold her
11 crack cocaine, maybe gotten her hooked on cocaine. And I
12 find out about that. And I decide that I'm going to go out
13 and intentionally kill that person. Maybe my daughter has
14 been ruined, maybe brain dead or whatever, because of that.
15 And I go in and I break into his home and I murder him.

16 Now, I've committed a capital murder because I
17 committed a burglary in addition to capital murder.

18 A. Uh-huh.

19 Q. So technically, you see, I've committed a capital
20 murder, but you may want to look at the relationship and the
21 reasons why I did that.

22 Is that kind of what you're talking about, even
23 though that may be an extreme example? Or are you talking
24 about something different?

25 A. You can say that. Say someone raped my daughter and

1 I go out and I want to kill that person, that would be
2 somewhat --

3 Q. Yeah. Okay. I want to go through some of the
4 things that other jurors have mentioned to me and get your
5 reaction to them. Sometimes jurors will tell me that the age
6 of the defendant may be a mitigating circumstance, the
7 thinking being a younger person may be more capable of being
8 rehabilitated than an older person.

9 What are your feelings about age as a possible
10 mitigating circumstance?

11 A. If it's a young teenager, I think it's possible, but
12 someone who is over 18 or so, I don't know if it's possible.

13 Q. In the State of Texas you have to be at least 17
14 before we can seek the death penalty against an individual
15 anyway.

16 Sometimes people will tell me that drug use or
17 alcohol use may be a mitigating circumstance. I guess there
18 are two extremes here. I've had people tell me they think
19 it's a disease process.

20 A. Uh-huh.

21 Q. Therefore it would be a mitigating circumstance.
22 I've had others tell me it's a personal choice and you have
23 to make that decision so they don't particularly think of it
24 as mitigating.

25 What are your feelings there?

1 A. It's a personal choice, influence the way you are,
2 take what you do.

3 Q. Sometimes in cases like this, again, remorse may be
4 a mitigating circumstance to some people. You know, if a
5 person -- and let me give you an example. If a person
6 committed a horrible murder, for instance, maybe it was done
7 in the heat of passion, if you will, or spontaneously, and
8 they're instantly sorry for what they've done. They truly
9 regret their actions. They stay there at the crime scene.
10 They call the police. The police get there. They fully
11 cooperate with the police. Maybe the police officer even
12 says when I got there, the poor man was on his hands and
13 knees praying to God for forgiveness and crying. That would
14 be one situation.

15 Maybe on the other extreme you have a situation
16 where it's a planned out killing of some sort. The person
17 doesn't stay at the scene. Maybe they flee. Maybe the
18 police have to find them, hunt them down.

19 Can you see how there may be all shades of remorse
20 there?

21 A. Yes.

22 Q. How -- how do you feel about that as a possible
23 mitigating circumstance?

24 A. I don't think the show of remorse would have an
25 affect on me, because it would be faked possibly.

1 Q. All right. Another issue that sometimes comes up in
2 a case like this, and this deals with the defendant's
3 upbringing. Sometimes a defendant might claim that he's been
4 the victim of sexual abuse or physical abuse as a child.
5 And, of course, like any issue in this case, you're going to
6 have to determine what the facts truly are. You may hear the
7 testimony concerning abuse and find that there's just no
8 basis for it. Maybe you don't believe it. Maybe you think
9 again that's being faked for some advantage. But again,
10 that's your call.

11 Do you think in general that there may be some
12 people out there that falsely claim to be the victims of
13 sexual or physical abuse?

14 A. This one kind of touches home, but, yeah, I think
15 it's possible to be faked.

16 Q. You say it sort of touches home. Without getting
17 too personal, can you tell me what kind of connection you may
18 have had with that?

19 A. I have not been experienced with any of the sexual
20 thing, but I do have a brother and some siblings who were
21 involved in some stuff, just of late, so --

22 Q. Were they -- were they victims or were they --

23 A. It was between each other --

24 Q. Yes, sir. You know, again, I can't go into the
25 evidence here, but just from experience, again it's not

1 uncommon to have testimony where an individual may claim that
2 perhaps as a young child he was victimized in some way,
3 either sexually or physically. There may be some testimony I
4 guess you can imagine that may be somewhat graphic --

5 A. Uh-huh.

6 Q. -- at the punishment phase of this sort of trial.
7 And I guess only you know since you have had the involvement,
8 do you think that that's the kind of issue that hits home
9 close enough for you that you might have trouble listening to
10 that objectively?

11 A. No.

12 Q. Or it might -- it might bring out some emotions in
13 you in some fashion?

14 A. No, I don't think so because even though something
15 happened to some person, you still have a choice and you can
16 overcome what happened to you.

17 Q. One other thing with regards to that, you know, some
18 people have told me if they look at that, obviously they'd
19 want to know all the facts of the case. And some people have
20 said, well, I want to know when did the person first make the
21 claim of abuse.

22 MR. DAVIS: We have an agreement.

23 MR. BYCK: We have an agreement, Your Honor.

24 (Mr. Newman Excused From Consideration)

25 THE COURT: Thank you. You are excused, sir.

1 VENIREPERSON: All right.

2 THE BAILIFF: Do you know how to get out?

3 VENIREPERSON: No.

4 (Venireperson excused from courtroom.)

5 (Venireperson brought into courtroom.)

6 THE COURT: Good morning. Welcome back. Ask
7 you to raise your right hand, please.

8 (Venireperson additionally sworn.)

9 THE COURT: You may lower your hand. Ms.
10 Alvarado, let me reintroduce the individuals seated before us
11 at the counsel tables.

12 Beginning at the far left, lead counsel for the
13 State, a Senior Prosecutor in the Dallas District Attorneys
14 Office, Mr. Greg Davis.

15 MR. DAVIS: Good morning.

16 VENIREPERSON: Good morning.

17 THE COURT: Seated next to him is co-counsel,
18 Chief Prosecutor at the present time assigned to this the
19 194th District Court, the Honorable Mary Miller.

20 MS. MILLER: Good morning.

21 THE COURT: Moving on to the next table, we
22 begin first with one of the defense attorneys, board
23 certified criminal law specialist, so designated by the State
24 Bar of Texas, the Honorable Michael Byck.

25 MR. BYCK: Good morning.

1 VENIREPERSON: Good morning.

2 THE COURT: Seated immediately next to him is
3 one of the defense attorneys as well, the Honorable Jennifer
4 Balido.

5 MS. BALIDO: Good morning, Ms. Alvarado.

6 VENIREPERSON: Good morning.

7 THE COURT: Next to Ms. Balido, opposite Mr.
8 Byck, is the accused, the defendant, Jedidiah Isaac Murphy.

9 THE DEFENDANT: Good morning.

10 VENIREPERSON: Good morning.

11 THE COURT: This is a third attorney
12 representing the defense. Her name is Jane Little. Also a
13 board certified criminal law specialist. She is working on
14 some other aspects of the case outside the courthouse other
15 than jury selection.

16 Ms. Alvarado, we'll begin with the State in the
17 person of the Honorable Greg Davis.

18 MR. DAVIS: Yes, sir.

19 THE COURT: Mr. Davis.

20 MR. DAVIS: May it please the Court.

21 ROSA ALVARADO
22 was called as a venireperson by the Court and, after having
23 been first duly sworn, was questioned as follows:

24 Voir Dire Examination

25 By Mr. Davis:

1 Q. Good morning again, Ms. Alvarado. How are you?

2 A. Fine, thank you.

3 Q. Ms. Alvarado, I'm going to talk to you for a little
4 bit about the issues that the Judge has already talked with
5 you about. But before I do, just looking at your
6 questionnaire, kind of getting your general attitudes about
7 the death penalty, I just want to start and ask you how you
8 really feel about participating in this type of case. I do
9 that because I've had people that are -- that tell me they're
10 in favor of the death penalty strongly, but when they come
11 down here and it gets to be a real possibility that they're
12 going to be on this jury, tell me I just don't think
13 personally that I can do this, I don't want to do it.
14 Because the State is seeking the death of Jedidiah Murphy.
15 That's our goal. It's not going to change. At the
16 punishment phase I'm going to ask the jurors to answer these
17 questions in such a way that Judge Entz will be required by
18 law to impose a sentence of death on Jedidiah Murphy. If
19 that happens, he'll be transported to death row. He'll stay
20 there until the date that's been assigned for his death. On
21 that date he's going to be taken to the death chamber in
22 Huntsville, Texas. He's going to be strapped down on a
23 gurney. He's going to have a needle put into his arm. He is
24 going to lie on that gurney no matter what he's doing. He
25 may be praying for forgiveness. He may be screaming, but

1 he's going to be strapped down. He's going to have a needle
2 placed into his arm and within 15 minutes, he's going to be
3 dead on a gurney because of the verdict rendered in this type
4 of case. And I've had jurors tell me even though they favor
5 the death penalty, there's no way that they could sit there
6 and hear this type of evidence, have that on their conscience
7 knowing that they participated in this kind of verdict.
8 Maybe years later have to wake up and watch the television
9 and see that Mr. Murphy was executed because of their
10 verdict.

11 So I want to first of all give you this opportunity
12 to tell me how you personally feel because we don't want to
13 put anyone in a position where service on this jury is going
14 to violate their conscience in some way. Can you tell me how
15 you really feel about being on this type of jury?

16 A. Well, I don't feel too good about it because in a
17 way I'm -- I'm for the death penalty, but there's also part
18 of me that thinks it's not a way out of things.

19 Q. Right.

20 A. So in a way I agree with it, but there's a lot of
21 reasons why I don't agree with it either.

22 Q. That's kind of what I've heard. You know, because
23 I've had people say, you know, kind of in a philosophical way
24 I'm agreeable to parts of the death penalty, but I mean
25 there's nothing philosophical about this man. He's a living,

1 breathing human being, and our goal is to take his life.

2 Do you really think that this is the type of case
3 where you could sit there and listen to that evidence and it
4 may be necessary to take a pen in your hand and actually sign
5 a verdict form, you know, that results in his death. Do you
6 really think you can do that, or not? If you couldn't, you
7 know, just tell us and, you know, we'll understand because
8 we've had other people say that also.

9 A. I think I could.

10 Q. You think you could?

11 A. (Nods head.)

12 Q. Okay. Let me talk to you then for a little bit
13 about the death penalty, how it operates here in the State of
14 Texas, the special issues that we have involved in this
15 case. Special Issue Numbers 1 and 2 over here, this is what
16 we have to deal with in a death penalty case. First of all,
17 let me ask you, what types of cases do you think would be
18 proper for the death penalty?

19 A. I would think it would be somebody who has, you
20 know, like went into somewhere and committed murder, one
21 murder, just didn't have no heart to kill more than one
22 person, because sometimes you're in situations where you have
23 no way out.

24 Q. Uh-huh.

25 A. You know, that's your only choice, but some people

1 have a choice and they decide to take the wrong one. And I
2 think that's the people that should be punished.

3 Q. Uh-huh. You know, some people tell me that, you
4 know, in the -- oh, the case of Timothy McVeigh where he
5 killed over a hundred people at one time, kind of a multiple
6 of some sort and that, you know, maybe in a case like that
7 they would be in favor of the death penalty.

8 Is that kind of what you're saying?

9 A. Uh-huh.

10 COURT REPORTER: I need you to say yes or no.

11 A. Yes.

12 Q. (By Mr. Davis) Any other types of capital murders
13 that you think the death penalty is appropriate for, or do
14 you think in the other types that a life sentence would be
15 more appropriate?

16 A. I think sometimes a life sentence would be more
17 appropriate.

18 Q. You see in this case, and there are capital murder
19 cases where the State can prove that more than one person was
20 killed during the same criminal transaction, during the same
21 crime. I've had cases -- the last one I tried, as a matter
22 of fact, was a case over in Irving where the man went into
23 the car wash and killed five people at one time. I guess in
24 that kind of case you're saying you could probably consider
25 the death penalty in that one where he killed five people,

1 right?

2 A. No. Not in that one. I mean, just in one where
3 it's just one person, but stuff like that, that person it's
4 not safe for society for that person to be out and have the
5 chance to break out of jail.

6 Q. Right. If a person only kills one person though, do
7 I understand -- if I went in and just killed one person
8 instead of four or five people, do you think that's a
9 situation where --

10 A. I think what I'm really trying to say is the way the
11 person does it, because there are sometimes when, like I say,
12 you have no way out, but there are other times where you just
13 do it out of the coldhearted mind you have.

14 Q. Uh-huh. Okay. Let me ask you, you know, in some of
15 the legal rights that we have down here. First of all, I
16 think the Judge has already told that you this person is
17 presumed innocent of this offense. Some people tell me they
18 think the defendant should have to do something to prove his
19 innocence. I believe you indicated on your questionnaire
20 that you believed that way.

21 Do you think in this kind of case that you would
22 need some evidence from the defendant before you could decide
23 whether he's guilty or not guilty?

24 A. Yes, I do.

25 Q. Okay. Let me just give you an example. Let's say

1 that for some reason the defense doesn't put any testimony
2 on. They don't call the defendant to the stand. He doesn't
3 testify. All right. Of course, the law is going to require
4 you to go back there and not hold that against him or
5 consider it, but I do know that, you know, from experience a
6 lot of people tell me if that were me, you know, I'd sure be
7 up there if I wasn't guilty and I'd want my say in the
8 courtroom. And I've had a lot of people tell me if the
9 defendant does not testify, that's something they're going to
10 be thinking about in a case like this where it's this
11 serious. And if a man doesn't testify, they're going to be
12 wondering just what did he have that he didn't tell me.

13 Is that what you're saying to me, or are you not
14 saying that to me?

15 A. No, that's what I'm saying.

16 Q. Okay. That's just something you're not going to be
17 able to put out of your mind, are you?

18 A. To be honest, no.

19 Q. Okay.

20 MS. BALIDO: Judge, I'd like to question her.

21 THE COURT: Okay.

22 Cross-Examination

23 By Ms. Balido:

24 Q. Ms. Alvarado, my name is Jennifer Balido, and I
25 represent Mr. Murphy in this case. I'm just going to ask you

1 some questions about some of the stuff you've been talking
2 about with Mr. Davis.

3 Basically the State has the burden of proof in this
4 case. Okay. Before you can find Mr. Murphy guilty of
5 capital murder, the State has got to prove beyond a
6 reasonable doubt that he committed the offense. All right?
7 You understand that?

8 A. Uh-huh.

9 Q. You need to say yes or no for the court record.

10 A. Yes.

11 Q. And if they don't prove the case beyond a reasonable
12 doubt, then you have to find him not guilty. Do you
13 understand that?

14 A. Yes.

15 Q. Okay. And basically what we're talking about is,
16 you know, I think everybody agrees that they would like to
17 hear both sides of the story. And that's fine, and it sounds
18 to me like you'd like to hear both sides of the story,
19 correct?

20 A. Yes.

21 Q. But to be a constitutionally qualified juror and to
22 sit on this jury, what you have to be able to say is, well,
23 you know, I have this opinion, but I can follow the law and I
24 can do what the Judge tells me. And what the Judge will tell
25 you in this case is that the State has the burden of proof in

1 this case. And that if the State does not prove its case
2 beyond a reasonable doubt, then you'd have to find him not
3 guilty.

4 Now, what you were talking about with Mr. Davis is
5 the defendant and his 5th Amendment privilege to choose to
6 testify or not testify. No one can make him testify. Mr.
7 Davis can't make him testify. I can't make him testify. The
8 Judge cannot compel him to testify. Okay? And what the
9 Judge will instruct you is that if he chooses not to testify
10 for whatever the reason, you know, he could not speak English
11 very well, he could not be very smart. There's just a whole
12 host of reasons that you'll never know. And the Judge will
13 instruct you that if he does -- if he chooses not to testify,
14 that you are not to consider that for any purpose. All
15 right.

16 If the Judge instructs you that you are not to
17 consider that for any purpose, could you follow that
18 instruction?

19 A. I don't think I could, because it would still be the
20 doubt in the mind of why not.

21 Q. Okay. I just wanted to kind of clear that up.

22 MS. BALIDO: That's fine, Judge.

23 THE COURT: Thank you very much, Ms.

24 Alvarado. You are excused.

25 VENIREPERSON: Uh-huh.

1 (State challenge for cause - Ms. Alvarado)

2 MR. DAVIS: For the record, the State will
3 submit the juror for cause.

4 (Challenge for Cause Granted)

5 THE COURT: Granted.

6 (Venireperson brought forward.)

7 THE COURT: Please be seated. Good morning.
8 Welcome back.

9 VENIREPERSON: Good morning.

10 THE COURT: Ask you to raise your right hand,
11 please.

12 (Venireperson additionally sworn.)

13 VENIREPERSON: I do.

14 THE COURT: Thank you. Lower your hand.

15 Allow me, if I may, to reintroduce the individuals whom we
16 see seated at the counsel table.

17 Begin with the far left, lead prosecutor for the
18 State, a Senior Prosecutor, Dallas District Attorneys Office,
19 the Honorable Greg Davis.

20 MR. DAVIS: Good morning.

21 VENIREPERSON: Good morning.

22 THE COURT: He is joined this morning by
23 co-counsel, present time occupying the position of Chief
24 Prosecutor assigned to the 194th District Court, the
25 Honorable Mary Miller.

1 MS. MILLER: Good morning.

2 VENIREPERSON: Good morning.

3 THE COURT: Going to the next table, we begin
4 first with one of the defense attorneys, the Honorable
5 Jennifer Balido.

6 MS. BALIDO: Good morning.

7 THE COURT: Seated next to Ms. Balido is her
8 client, the accused, the defendant, if you will, Mr. Jedidiah
9 Isaac Murphy.

10 THE DEFENDANT: Good morning.

11 VENIREPERSON: Good morning.

12 THE COURT: Ms. Balido is joined in the
13 defense of Mr. Murphy by two other attorneys, one of whom I
14 anticipate will be returning shortly, a board certified
15 criminal law specialist, so designated by the State Bar of
16 Texas as a result of experience and training and having
17 passed a rather difficult examination. His name is Mr.
18 Michael Byck, B-y-c-k.

19 There is a third attorney representing Mr. Murphy
20 who is not with us today. She is working in other parts of
21 the case involving the defense outside the courthouse today,
22 also a criminal law specialist. Her name is Jane Little.

23 Are you ready to proceed with the questions by the
24 attorneys?

25 VENIREPERSON: Yes.

1 THE COURT: At the conclusion of which you
2 will be notified by me whether or not you remain under
3 consideration as one of the possible 12 jurors in the case.

4 We'll begin with the State, the Honorable Mary
5 Miller.

6 Ms. Miller.

7 CARLA ALDER

8 was called as a venireperson by the Court and, after having
9 been first duly sworn, was questioned as follows:

10 Voir Dire Examination

11 By Ms. Miller:

12 Q. Good morning, Ms. Alder?

13 A. Alder.

14 Q. Did I say it correctly? You sound like most of us
15 around here. I assume it's allergies?

16 A. I think it's a head cold.

17 Q. Oh, okay. If you can't hear me or whatever or don't
18 understand what I say, just let me know. I'll be happy to
19 rephrase it or try and speak louder.

20 And I just want to reiterate what the Judge said,
21 there are no right or wrong answers. Both myself and Ms.
22 Balido are going to be asking you basically questions that
23 deal with what your opinions and feelings are regarding
24 certain areas of the law and principles of the law that are
25 going to be applicable in this particular case.

1 And I want to direct your attention back to the
2 other day when you were brought in with the panel of 60
3 people and you were asked to fill out the questionnaire.
4 When Judge Entz initially introduced the defendant, Jedidiah
5 Isaac Murphy, and told you that this was a death penalty case
6 and the State was seeking death against the defendant, what
7 was your initial reaction?

8 A. I was actually surprised. You don't come in
9 expecting that as he said. I mean, it was a surprise, but I
10 mean not really surprising just -- for the situation at the
11 time.

12 Q. I notice when you filled out your questionnaire, you
13 said that you were in fact in favor of the death penalty.

14 Why -- why do you believe the death penalty is
15 appropriate in some cases?

16 A. Well, I figure that it's a law that is already
17 existing and there are people that are in our prisons that
18 are waiting on death row with no chance of parole that are
19 just sitting there and then we have the issue of the over
20 crowded prisons. There's nothing that I can do about it, and
21 I do agree with it. I mean, I just think that if it's going
22 to be a case, it needs to be -- it needs to be handled. I
23 think our prisons are extremely over crowded to have them
24 just sitting there. I mean, that may sound harsh or cruel,
25 but --

1 Q. So if I'm understanding you correctly, you think
2 that perhaps the death penalty, once it is assessed, should
3 be carried out quicker than it is?

4 A. Absolutely.

5 Q. Okay. And a lot of people when they fill out their
6 questionnaire, they say they are in fact in favor of the
7 death penalty in the abstract, but when they are called upon
8 to sit in that particular chair -- you need a glass of water?

9 A. No.

10 Q. When they're called upon to sit in that particular
11 chair, they realize there's nothing abstract about it because
12 you can look over there, Jedidiah Isaac Murphy is a living,
13 breathing human being. There's nothing abstract about him.
14 And they say, well, look, when I filled that out, I
15 believed -- and I still do believe in the death penalty, but
16 it's a little bit different now that I am being called upon
17 to actually participate in it. And even though I believe in
18 it and it's appropriate in some cases, I could not personally
19 participate in a case where if the State succeeds, the
20 defendant, Mr. Murphy, will lay dead in Huntsville some day
21 in the future. Other people say, well, I believe in it, I
22 don't have any problem participating in it.

23 How do you feel about it, Ms. Alder?

24 A. I wouldn't want to solely be the only person that
25 made that decision, but I feel that people are innocent until

1 proven guilty and I believe that if you can convince 12
2 people who actually believe that, that this man is innocent,
3 if you can convince 12 people that he is guilty, then I don't
4 see where there would be a problem with that.

5 Q. Okay. So -- so if you were required to take pen in
6 hand and actually sign the verdict form that would result in
7 the Judge assessing a death sentence against this defendant,
8 are you telling us that you could do that?

9 A. I could do that as -- I mean, that's my right.
10 That's my opinion.

11 Q. Okay. And that's all we need to know because there
12 are some people who say I could not personally participate in
13 it, knowing some day in the future I may wake up and hear
14 that the defendant has been put to death and it was a result
15 of my actions.

16 A. Uh-huh.

17 Q. But you're saying --

18 A. Well, it's not a result of my actions solely. It's
19 a result of his actions.

20 Q. Okay. And that's fine, Ms. Alder, and I understand
21 that. Some people just take it upon themselves that it's
22 much more personal to them.

23 A. Uh-huh.

24 Q. Let's talk about the special issues over here. Now,
25 once we get to the special issues, as the Judge has told you,

1 you have already found the defendant guilty of the offense of
2 capital murder. The State has already proven to you and the
3 11 other jurors that the defendant did in fact -- was in fact
4 guilty of the offense. We proved each and every element to
5 you beyond a reasonable doubt. And then we get over to these
6 special issues over here.

7 Special Issue Number 1. When you read Special Issue
8 Number 1, what do you think it's asking you to do?

9 A. It's asking me to take into consideration whether
10 it's safe or not safe -- as far as a threat to society goes.

11 Q. What type of information, regardless of whether it
12 would be legal or not, what type of information do you think
13 that you would like to know in order to be able to answer
14 Special Issue Number 1?

15 A. Definitely about the person, the type of life-style,
16 just in general what kind of person it was. I mean, you
17 can't make a decision like that without knowing somebody.

18 Q. And lot of people say background. Background would
19 be very important, a person's prior history. The best
20 predictor of the future which a lot of people say that's
21 asking you to look to the future and predict the future.
22 They say the best predictor of that is a person's background
23 or past or history.

24 When you're looking at Special Issue Number 1, you
25 may have a person who has been a pillar of the community, has

1 raised a family, has never been in trouble before. And this
2 is what some people would call an aberration, that they
3 committed that particular capital murder. Or you may have on
4 the other hand a person who has been in and out of trouble,
5 in and out of the criminal justice system, in and out of
6 opportunities for rehabilitation. Perhaps the system had
7 been given -- had given them chances to rehabilitate
8 themselves. They thumbed their nose at it.

9 Are those the different types of things that you
10 would want to know?

11 A. I feel that -- I mean, everybody at one point in
12 time I'm sure in their life or another finds themselves in a
13 situation where, oops, but that doesn't necessarily make you
14 a bad person. I just don't think that -- what you've done in
15 the past has something to do with it, but it doesn't solely
16 base on that.

17 Q. What -- what are some of the other things that as
18 far as background that you would want to be looking at?

19 A. Violent natures. Jobs that they've held. The
20 amount of time that they've held them, just security
21 matters -- I mean, issues that come up in your life that show
22 whether you're a stable person or not. What type of things
23 have occurred in the past would be an issue, but it wouldn't
24 be the only issue. Family. Is there any? Is there not
25 any?

1 Q. Ms. Alder, when you said that some people can do
2 something and it's whoops type thing, when you're looking at
3 Special Issue Number 1, even you've already found the
4 defendant had the specific intent to kill --

5 A. Uh-huh.

6 Q. -- and did in fact take someone's life, in this
7 particular case during the course of a robbery or a capital
8 murder, some people say that they would always therefore
9 answer Special Issue Number 1 yes. But it sounds to me like
10 you would follow the law and basically say as the law
11 requires you, no, I'm going to presume that's no, make the
12 State prove it beyond a reasonable doubt, that it should be
13 answered yes, and look at all of the information. Or are you
14 going to be one who says, no, if you commit a capital murder,
15 I'm going to answer it yes automatically?

16 A. There is no automatic answers in my opinion. I --
17 even with people that I meet off the street, I'm going to
18 assume that they are nice and innocent people until they
19 prove to me otherwise. I don't --

20 Q. What facts of this particular type of offense are
21 going to be important to you, Ms. Alder?

22 A. Well, probably most of them. I mean, I wouldn't --
23 there has to be a bunch of facts that -- to prove to me --

24 Q. Would the relationship between the parties -- you
25 might have a defendant who has -- who knows the victim,

1 perhaps has had a long running history, feud between the
2 complainant and the defendant. Or you might have a victim
3 who's a stranger, total stranger to the defendant.

4 Are those some of the types of things that would be
5 important to you?

6 A. Well, the relationship between the two absolutely.

7 Q. How about the motive?

8 A. Well, the reason why is not necessarily important.
9 It's whether I can believe that it happened or not.

10 Q. Okay.

11 MS. MILLER: Judge, I believe we have an
12 agreement.

13 MR. BYCK: So agreed, Your Honor.

14 (Ms. Alder Excused From Consideration)

15 THE COURT: Thank you very much. Appreciate
16 it. You are excused.

17 MS. MILLER: Thank you, Ms. Alder.

18 VENIREPERSON: Thank you.

19 (Recess of proceedings.)

20 THE COURT: Good morning, Ms. Rash. Welcome
21 back.

22 VENIREPERSON: Thank you.

23 THE COURT: Ask you to raise your right hand
24 and again be sworn in, please.

25 (Venireperson additionally sworn.)

1 VENIREPERSON: I do.

2 THE COURT: Thank you. Lower your hand.

3 Ms. Rash, allow me, if I may, at the outset to
4 reintroduce the individuals we see seated at the counsel
5 tables.

6 Beginning at the far left, we have a Senior
7 Prosecutor in the Dallas District Attorneys Office, lead
8 counsel for the State, the Honorable Greg Davis.

9 MR. DAVIS: Good morning.

10 VENIREPERSON: Good morning.

11 THE COURT: He is joined by co-counsel,
12 present time occupying the position of Chief Prosecutor
13 assigned to this the 194th District Court, Honorable Mary
14 Miller.

15 MS. MILLER: Good morning.

16 VENIREPERSON: Good morning.

17 THE COURT: Moving on to the next table, we
18 begin first with one of the three defense attorneys.

19 Gentleman is a board certified criminal law specialist, so
20 designated by the State Bar of Texas, result of experience,
21 training, and completing successfully a very competitive,
22 difficult examination, the Honorable Michael Byck.

23 MR. BYCK: Good morning, ma'am.

24 VENIREPERSON: Good morning.

25 THE COURT: Seated next to Mr. Byck is one of

1 his co-counsel, the Honorable Jennifer Balido.

2 MS. BALIDO: How are you?

3 VENIREPERSON: Just fine.

4 THE COURT: Moving down the table, opposite
5 Ms. Balido from Mr. Byck, is the accused, the defendant,
6 Jedidiah Isaac Murphy.

7 THE DEFENDANT: Good morning.

8 VENIREPERSON: Good morning.

9 THE COURT: There is a third attorney defense
10 attorney also, as is true of Mr. Byck, a board certified
11 specialist. Her name is Jane Little. She is working on
12 other matters germane to this case outside the courthouse
13 during the procedures we're engaged in today.

14 Ms. Rash, we will begin shortly with the State
15 asking you questions. You will know before you leave us this
16 morning whether or not you remain under consideration as a
17 juror. We hopefully anticipate this rather laborious
18 time-consuming process to end shortly. We have not yet -- we
19 hopefully anticipate that the testimonial stage of the trial
20 will begin on Tuesday, the 29th of May. The day before the
21 United States Congress has designated Memorial Day will be
22 honored or celebrated throughout the country.

23 Do you know of any reason why your schedule could
24 not be, if necessary, altered or arranged such to return on
25 the 29th?

1 VENIREPERSON: No.

2 THE COURT: We will begin with the State.

3 Again, the Honorable Greg Davis.

4 Mr. Davis, Mrs. Rash.

5 MR. DAVIS: Thank you. My it please the
6 Court.

7 CAROLYN RASH

8 was called as a venireperson by the Court and, after having
9 been first duly sworn, was questioned as follows:

10 Voir Dire Examination

11 By Mr. Davis:

12 Q. Good morning again, Ms. Rash. How are you?

13 A. Just fine.

14 Q. Good. Ms. Rash, for the next 30 minutes or so, I'll
15 have a chance to speak with you about some of the issues
16 involved in this type of case. To reiterate what the Judge
17 has previously told you, there are no right or wrong answers
18 this morning. Most of the questions that we'll ask of you
19 deal with how you feel about a subject, what your opinions
20 are. I've done enough of these cases, I've talked to enough
21 people to know that everybody feels differently about some
22 issues here. So as long as we know how you honestly feel,
23 that's all that we expect from you. Okay?

24 A. Okay.

25 Q. Ms. Rash, before we get into the subject matter of

1 this case, I just want to talk to you about something that
2 you indicated on your questionnaire. We asked if you knew
3 any of the attorneys involved in the case or any members of
4 the D.A. staff. You told us you knew Karen Wise who is a
5 member of our office, works in the appellate division.

6 How long have you known Karen Wise?

7 A. Oh, probably about 5 years. She's a member of
8 Altrissa (phonetic) which is an organization that I belong
9 to. So as long as she's been a member.

10 Q. All right. I'm not familiar with the organization.
11 What's its purpose?

12 A. It's a classified service organization. It was the
13 first organized for women. It's similar to rotary in the
14 fact that -- it's classified in fact that only 20 percent of
15 the members can be only in any one occupation so you get a
16 cross-section of the community.

17 Q. You also indicated that Jane Little had been a
18 member of Altrissa with you; is that correct?

19 A. That's correct.

20 Q. How long -- how long ago was that?

21 A. I was trying to remember how long ago it's been.
22 It's probably been -- I think either she brought in Karen or
23 Karen brought her in, so it's probably five or six years.
24 She was only a member for a short time.

25 Q. Okay. I guess you can see my concern here, and why

1 I'm asking about this.

2 A. Uh-huh.

3 Q. Do you feel like your relationship with Jane Little
4 since she is the lead prosecutor on the other side and I
5 would expect her to be asking questions, I would expect her
6 to be making arguments during this case, being in a position
7 to ask you to do certain things on behalf of her client. Do
8 you feel like that relationship would influence you in any
9 way, perhaps giving her more credibility perhaps, listening
10 to her arguments more closely, giving them a bit more
11 credence than you would to the State of Texas?

12 A. I don't believe so, but it might.

13 Q. Okay. I guess -- let me just put you in maybe a
14 tough position here. Let's say you're sitting at this table
15 in my position and you're representing a family who has lost
16 a loved one and tell you in this case that the victim in this
17 case was an 80-year-old woman, so you can understand that
18 there may well be family members -- that you're sitting here,
19 trying to select a jury, trying to find 12 people that can
20 give the State of Texas a fair trial as well as Mr. Murphy.
21 Are you going to feel comfortable enough about yourself
22 knowing what you know to actually select yourself as a juror
23 in this case? Because that's really the question I'm going
24 to have to make. I'm going to have to answer that question
25 myself in just a little bit perhaps.

1 A. I think it would be difficult to chose me if I knew
2 the defense.

3 Q. Okay. Listen, I appreciate your honesty, and I
4 appreciate you telling us about the relationship because
5 otherwise we're sitting down here just running blind if you
6 will. And I'll tell you this from looking at your
7 questionnaire, I think you'd make an excellent juror. I
8 think you've served on a jury before, haven't you?

9 A. Uh-huh.

10 Q. And I think if this relationship were not present in
11 this case, there would no problem at all, but I think we've
12 agreed as attorneys to release you so we're not going to put
13 you in that position. Okay?

14 MR. BYCK: Yes, sir.

15 (Ms. Rash Excused From Consideration)

16 THE COURT: Thank you, Ms. Rash. You are
17 excused.

18 (Recess of proceedings.)

19 (General Voir Dire By The Court)

20 THE COURT: Counsel may be seated if you wish.

21 Does either side have any objection to going with
22 the 59 prospective jurors that are in the courtroom at this
23 time?

24 MR. DAVIS: No, Your Honor.

25 MR. BYCK: No objection.

1 THE COURT: Ms. King, are you ready?

2 This is a continuation of Cause F00-02424-MM, case
3 styled the State of Texas versus Jedidiah Isaac Murphy.

4 Is the State prepared to continue?

5 MR. DAVIS: The State's ready, Your Honor.

6 THE COURT: Mr. Byck, sir is the defense
7 prepared to continue?

8 MR. BYCK: Ready, Your Honor.

9 THE COURT: The record reflect the person of
10 the accused, Jedidiah Isaac Murphy, will be in court at all
11 times during this hearing absent my dictating the contrary
12 into the record.

13 Good morning, ladies and gentlemen. I'm Judge
14 Harold Entz. I'm pleased to welcome each of you to this the
15 194th District Court.

16 May I ask that all of you please rise, raise your
17 right hands, and be prepared to take an oath.

18 Ladies and gentlemen, before I begin with the oath,
19 let me assure you that the operative verb in the oath,
20 subject to your religious belief or conscience, at your
21 discretion will be either "swear" or "affirm."

22 (Oath given to venirepersons.)

23 THE COURT: Thank you. Please lower your
24 hands and again please be seated.

25 Ladies and gentlemen, let's proceed right into the

1 matters at hand. Allow me, if I may, at the outset to
2 introduce the four individuals whom you see seated at the
3 counsel table. I will be introducing two other individuals
4 as well in absentia that are very important components of
5 this particular trial.

6 Begin however with the counsel table to the right as
7 you look at the two tables, the gentleman to the far right is
8 the lead prosecutor for the State in this particular case,
9 one of the Senior Prosecutors at the present time in the
10 Dallas District Attorneys Office, the Honorable Greg Davis.

11 Mr. Davis.

12 MR. DAVIS: Good morning.

13 THE COURT: Seated next to him is co-counsel
14 in this prosecution. At the present time this prosecutor has
15 been assigned the role by Dallas District Attorney Bill Hill
16 as the Chief Prosecutor assigned to this the 194th District
17 Court. Assisting Mr. Davis in this prosecution, I'm pleased
18 at this time to introduce the Honorable Mary Miller.

19 Ms. Miller.

20 MS. MILLER: Good morning, ladies and
21 gentlemen.

22 THE COURT: Moving on to the next table, there
23 are one of three attorneys representing the defendant in this
24 particular matter. Pleased at this time to introduce a board
25 certified criminal law specialist, so designated by the State

1 Bar of Texas, as a result of not only experience and
2 training, but also having successfully completed a rather
3 difficult written examination. Pleased at this time to
4 introduce the Honorable Michael Byck.

5 MR. BYCK: Good morning, ladies and gentlemen.

6 THE COURT: Seated next to Mr. Byck is the
7 defendant, the accused, if you will, Mr. Jedidiah Isaac
8 Murphy.

9 THE DEFENDANT: Good morning.

10 THE COURT: Mr. Murphy.

11 Mr. Byck is assisted by two other attorneys
12 representing Mr. Murphy in this matter. Though not present,
13 I will introduce them by name. Lead counsel for the defense
14 in this matter, a former Chief Prosecutor in the Dallas
15 District Attorneys Office, a board certified criminal law
16 specialist, as is Mr. Byck, the Honorable Jane Little.

17 The third attorney representing Mr. Murphy in this
18 particular matter is a former Assistant District Attorney
19 whose name is Jennifer Balido.

20 Ladies and gentlemen, Mr. Murphy, the defendant, who
21 sits before you at counsel table has been indicted by a
22 Dallas County grand jury. A Dallas County grand jury has
23 indicted Mr. Murphy for capital murder. The State has made
24 known its intent to seek the death penalty. You have been
25 summoned to this court as prospective jurors in a capital

1 murder case in which the State is seeking the death penalty.
2 By law I am at this point before we get into the matters of
3 the questionnaires for which you have been given the
4 clipboards, will be given the questionnaires momentarily --
5 by law I am required to make certain matters known to you
6 before we proceed any further.

7 1972, the United States Supreme Court in a very well
8 known case to those of us in the law called Furman versus
9 Georgia ruled that all -- when they actually were just
10 dealing with the Georgia statute at the time, but by
11 implication made effect to all of the other states that had
12 the death penalty at the time, that the manner by which those
13 statutes were so constructed did not pass constitutional
14 muster. Reason being, so said the then members of the
15 Supreme Court, it's a violation of the 8th Amendment and the
16 14th Amendment of the United States Constitution. Giving you
17 a Reader's Digest version of that opinion, in essence the
18 Supreme Court said that the way that the statutes were so
19 constructed gave the prosecutors unbridled discretion with
20 regard to those cases in which the ultimate punishment, the
21 death penalty, could be imposed.

22 A number of legislatures addressed that particular
23 opinion, including but not limited to Texas. And in 1976 the
24 United States Supreme Court in a trilogy or three cases, one
25 being Texas -- case in Texas is Jurek versus Texas. The

1 United States Supreme Court ruled that the death penalty
2 procedure post-Furman versus Georgia implemented by the Texas
3 legislature did in their opinion, the Supreme Court, satisfy
4 constitutional -- United States constitutional safeguards. A
5 number of states have different manners of implementing the
6 death penalty. Texas and Oregon basically are the only two
7 states that have the same type of system. Quite different
8 from Georgia and Florida, California, and 30 plus other
9 states that have the death penalty.

10 The Supreme Court in 1972 in the Furman versus
11 Georgia case said to all of us throughout the country that
12 murder alone without any sort of an accompanying aggravating
13 factor could not be a death case. The Supreme Court told us
14 all that there must be an aggravating factor or factors that
15 accompany the homicide, the murder, before the defendant
16 would be eligible constitutionally to be put to death. A
17 number of states have put these aggravating factors as a
18 laundry list in the penalty stage of their murder trials.
19 Texas both put the aggravating factors at the penalty phase
20 and incorporated them in the guilt/innocence phase. Texas
21 wanted to be extremely cautious and certain that the Texas
22 scheme was constitutional, so the legislature said that for
23 an individual to be subject in Texas to the death penalty
24 must be, number one, a murder, must be first and foremost a
25 murder committed during the commission of a robbery, a

1 burglary, sexual assault, arson, or kidnapping.

2 Legislature also said that a homicide committed
3 towards the person of protected classes could be an
4 aggravating factor for which the death penalty could be
5 appropriate. Those statuses or occupations that are
6 protected are police officers, firemen, and penal officers
7 during the lawful discharge of their duties. Supreme Court
8 also said that the killing of two or more persons in a single
9 criminal episode, such as the Timothy McVeigh type situation
10 up in Oklahoma City a few years ago, was death penalty
11 eligible. Keep in mind I'm saying eligible, because I'm
12 going to be getting into the other matters with regard to
13 punishment momentarily.

14 Also, serial murders, the Ted Bundy type situation,
15 the Henry Lee Lucas type situation, the Jeffrey Dahmer
16 situation up Milwaukee. Murder for hire could also be
17 considered an aggravating factor. Also, murder for
18 remuneration, kill somebody for their insurance money as a
19 for instance. Also, age is a protected status. The murder
20 of an individual under the age of 6 can be a death penalty
21 eligible case. So keep in mind that to pass constitutional
22 approval by the Supreme Court, must be murder and must have
23 an aggravating factor.

24 Now, I said that in Texas a murder during the course
25 of one of these aggravating factors makes a defendant so

1 found guilty eligible for the death penalty, but far from
2 having that the end result. A person found guilty anywhere
3 in Texas, not just this the 194th District Court or not just
4 Dallas County but all 254 counties, an individual found
5 guilty of capital murder is looking at an either/or
6 punishment. Either on the one hand life in the penitentiary,
7 or on the other hand, death by lethal injection. Life or
8 death. The only type of criminal offense in the Penal Code
9 of the State of Texas in which there is not a range of
10 punishment. For instance, murder, not capital murder --
11 murder, without the aggravating factor, has a penalty range
12 set by the legislature not less than 5, nor more than 99
13 years or life, with an optional fine not to exceed \$10,000.

14 The legislature realizing -- and I've been at this
15 27 and a half years -- all kinds of relationships can exist
16 between persons involved in a homicide. To make room for
17 every conceivable type of a relationship or circumstance, the
18 legislature has given a vast, vast penalty range. You can
19 have a total stranger-on-stranger. You could have two dope
20 dealers killing over turf -- I mean, all kind of scenarios
21 that you could possibly imagine come to play in a homicide
22 case. Legislature, with which I do not always agree, I think
23 in this case was very wise in giving a full latitude in
24 giving we the body politic an option to take everything into
25 consideration, the circumstances, relationships between the

1 parties, in a homicide case, a murder.

2 But in a capital murder case, as I said a moment or
3 so ago, it's either life or death. An individual found
4 guilty of capital murder, punishment ultimately is life in
5 the penitentiary. Must by law, before becoming eligible for
6 release on supervision called parole, serve 40, 4, zero,
7 calendar years before being eligible for parole.
8 Day-for-day, week-for-week, month-for-month, year-for-four,
9 regardless of good conduct while in custody, regardless of
10 efforts to rehabilitate him or herself, 40 years. No
11 guarantee 40 years the penitentiary doors fly open and out
12 the defendant goes. 40 years must be served before being
13 eligible for consideration for parole.

14 In my opinion, and I think this is shared by most
15 individuals in the criminal justice field in Texas, when
16 going into the penalty stage of a trial in which the State is
17 seeking death, the procedure is so constructed at the outset
18 to favor at the outset a life sentence and not death.
19 Doesn't start at death and then work back to life. Starts at
20 life. May end there, depending upon some issues that we're
21 going to be discussing momentarily. And only then, depending
22 upon certain circumstances, does it rise to a death sentence.

23 I would submit to you based upon the opinions of the
24 United States Supreme Court over the last 20 years, surely
25 over the last 10 years, there is no state or no United States

1 Congress could pass a death penalty statute that said if you
2 commit this offense, it's death automatically. Supreme
3 Court, as I read their opinions, said no way.

4 There is one prominent individual in the courtroom
5 who feels that treason during a time of war that results in
6 the harm or death of a United States citizen should be
7 automatic death. Some of you may feel that way as well.
8 While treason during time of war is a death penalty eligible
9 type case under the federal system, but at this point it's
10 not automatic. Not automatic.

11 Before, under Texas state law, a death sentence can
12 be imposed, during the penalty stage of the trial the
13 12-person jury is called upon to evaluate the evidence
14 presented in the full stage of the guilt/innocence stage of
15 the trial and other additional evidence that may not be
16 admissible at that stage of the trial but does become
17 admissible in the penalty stage of the trial, in answer of
18 these two special issues. Sometimes there is a third, but
19 that's not -- the third question statutorily is not
20 appropriate in this particular case, so the jury will be
21 called upon, if they find Mr. Murphy guilty of capital
22 murder, to address these two issues.

23 I'm not suggesting that you are unable to read, but
24 sometimes eyesight of people in the back of the courtroom
25 given the size of the print, makes it a bit difficult, so

1 allow me, if I may, to read it to you at this time.

2 Special Issue Number 1 reads as following, quoting,
3 whether there is a probability that the defendant would
4 commit criminal acts of violence that would constitute a
5 continuing threat to society, close quote.

6 Special Number 2 reads, quote, whether, taking into
7 consideration all the evidence, including the circumstances
8 of the offense, the defendant's character and background, and
9 the personal moral culpability of the defendant, there is a
10 sufficient mitigating circumstance or circumstances to
11 warrant that a sentence of life imprisonment rather than a
12 death sentence be imposed, period, close quote.

13 Now, only if a jury in Texas finds a defendant
14 guilty of capital murder in the guilt/innocence stage of the
15 trial is a jury ever called upon to answer these special
16 issues. Only in determining whether life or death is
17 appropriate. In a capital murder case in which the State is
18 not seeking death, the jury is not called upon to answer
19 these two questions. Say, well, give me a for instance,
20 Judge. When that would not be? For those of you that have
21 been in North Central Texas or Metroplex area the last
22 several years, perhaps you recall the two military cadets who
23 were found guilty of kidnapping a classmate of one of them,
24 lovers quarrel of some sort, apparently reading the media,
25 kidnapped the victim, shot and killed her, capital murder.

1 District Attorney in Tarrant County determined that the -- he
2 did not have sufficient evidence in his mind such that a
3 death penalty was appropriate so he only sought capital
4 murder guilty which he did in both cases, from a jury in Fort
5 Worth, 40 calendar years. And each of those two former
6 military cadets are in the penitentiary as we speak. Capital
7 murder, 40 years before they're eligible for release.

8 I would submit to you that Special Issue Number 1
9 has been grammatically constructed by the legislature that at
10 the commencement of the deliberations in the penalty stage of
11 the trial, the answer to that question at the beginning of
12 your deliberations or jury deliberations is no. Because the
13 special issue begins with the word "whether." It doesn't say
14 there is a probability. It says whether there is a
15 probability.

16 Now, as is true with the guilt/innocence stage of
17 the trial in which the burden of proof, the responsibility of
18 going forth with the evidence to prove the allegations in the
19 indictment, lies with the District Attorneys Office, Mr.
20 Davis, Ms. Miller, so, too, the burden of proof or
21 responsibility lies with the District Attorneys Office in an
22 effort to prove, if they can, beyond a reasonable doubt to
23 all 12 jurors that Question Number 1, Special Issue Number 1,
24 should be answered yes. We call that the future
25 dangerousness question.

1 If the State is unable to convince all 12 jurors
2 that Special Issue Number 1 should be changed from no to yes,
3 the jury returns to the courtroom with that decision, a life
4 sentence is the result. A life sentence is the result.

5 If, on the other hand, after deliberation jury
6 unanimously reaches the conclusion that Special Issue Number
7 1 should be changed from no to yes, only then need the jury
8 go on to Special Number 2.

9 Now, let's sit back and pause and take a deep breath
10 and think where a jury is if they get to Special Number 2.
11 In the guilt/innocence stage of the trial they've already
12 found the defendant guilty of capital murder. In this
13 particular case the indictment alleges a murder during the
14 course of either a robbery or a kidnapping. If the jury
15 finds those allegations in the guilt/innocence stage to be
16 proven beyond a reasonable doubt and return a verdict of
17 guilty, the defendant is looking at either life or death. If
18 during the deliberations in the punishment stage of the
19 trial, the jury answers Special Issue Number 1 yes, future
20 dangerousness, a Texas jury under that circumstance is
21 two-thirds of the way to a death penalty.

22 Special Issue Number 2 has been variously described
23 by legal, scholars professors in law school, judges, defense
24 attorneys, prosecutors, the like, in varying terms along the
25 following, the mercy question, the safety valve, the safety

1 net, if you will.

2 Special Number 2 gives a jury, if you will, a last
3 chance opportunity to look at all of the evidence and decide
4 if as a result of evidence being presented, a circumstance or
5 circumstances or the defendant's background is such because
6 of which the defendant should live and not die, give effect
7 to that mitigating evidence, act upon it appropriately, and
8 say, look, you're a capital murderer. Already found you
9 guilty of that. Already found you're a danger to society by
10 answering Special Issue Number 1 yes. But because of the
11 mitigating evidence or circumstances that have been
12 presented, because of which we think you should live and not
13 die, give effect to that evidence, answer it yes in which a
14 life sentence is a sentence by law I am required to impose.

15 Ladies and gentlemen, let me be very, very blunt and
16 candid as I possibly can be. If a jury answers Special Issue
17 Number 1 yes and Special Number 2 no, a trial judge in Texas
18 is required to sentence a defendant to death. I'm not a
19 thirteenth juror. Unlike in Florida where the jury makes a
20 recommendation in the matter of punishment to the trial judge
21 and the trial judge can either accept it or reject it, in
22 Florida doesn't even have to be unanimous. If seven persons
23 say death, it's death, subject to the Judge overruling it.
24 Seven say life, it's life, unless the Judge overrules it to
25 death. Not so Texas. Given our populist tradition, our firm

1 belief in the body politic, 12 jurors, they make the
2 decision. They make the decision. And I administer
3 judicially the punishment according to the jury's decision.

4 I would submit to you, ladies and gentlemen, that
5 over the last four or five years the United States Supreme
6 Court on a number of opinions has made it very, very clear to
7 all of us in this country that to be a prospective qualified
8 juror in a capital murder case as relates to Special Number
9 2, all 12 jurors must be willing to listen to, give serious
10 consideration to mitigating evidence, if presented, and if
11 presented and if the jury feels it rises to that level,
12 because of which the defendant should live and not die, give
13 effect to that. To do otherwise would mean a nullity. It
14 would be just an automatic, and that's not the way the law
15 is. Just because an individual is found guilty of capital
16 murder does not automatically equate a death sentence.
17 Texas, far from it. The number of executions we have in
18 Texas notwithstanding.

19 These are the legal hurdles that a jury must work
20 through before they ever get to the death penalty. Some
21 columnists, especially in the eastern press have thought,
22 boy, you know, what do you do down there in Texas? Do you
23 just automatically put them on a conveyor belt and that's
24 it? I leave that rhetorical question for you to answer.

25 Guilty of capital murder, either life or death.

1 Only becomes death if the jury to a person believes Special
2 Issue Number 1 a continuing threat. It's another safety
3 valve, if you will. Special Issue Number 2, are there any
4 mitigating circumstances.

5 Mitigating circumstances in the context of death
6 penalty litigation is a very interesting concept. I say
7 interesting because the United States Supreme Court on a
8 couple of occasions have said, judges, don't define
9 mitigating evidence to the jurors. Oh, we define everything
10 else, on or about, or manner and means. And I mean, we
11 define all of that in the jury's instructions, but mitigating
12 circumstances, Supreme Court has said no. They said and we
13 want to tell you Judges why we don't want you to do that.
14 Because mitigating circumstances with regard to Special
15 Number 2, and various other forms in other states, is kind of
16 like beauty in the eye of the beholder. Mitigating
17 circumstances are whatever a juror believes them to be. So
18 far in impaneling prospective jurors in this particular case,
19 we've had jurors say, well, mental health might be a
20 mitigating circumstance, you know, in a case-by-case basis.
21 Mental retardation. As a matter of fact, that's how we get
22 Special Number 2. Case out of Livingston County, Texas,
23 Johnny Ray Penry. That's how we get Number 2. But it's not
24 just limited to mental health and mental health issues.

25 Sexual abuse as a child, prospective jurors have

1 told us in their opinion. An individual born as a crack
2 baby, fetal alcohol syndrome baby. Does not overcome that
3 type of unfortunate birth circumstance through counseling or
4 otherwise. Case-by-case basis. What one individual may
5 think is mitigating evidence, another may think is
6 aggravating. That's fine, the Supreme Court says. This just
7 gives the jury a full opportunity to evaluate everything and
8 then decide the proper punishment in the case, on a
9 case-by-case basis, case-by-case basis.

10 Not alone. You have the collective shoulders of 11
11 other persons to rely upon. So it's not an individual
12 decision.

13 Here is a little bit of a scary situation. Arizona,
14 jury finds either guilty or not guilty of capital murder, if
15 they say guilty of capital murder. Not Texas. Arizona,
16 Judge alone decides life or death. Talking to some of my
17 Arizona judicial colleagues, said what about this. They say,
18 well, Harold, nobody put a gun to my back and said I had to
19 be a trial judge in Arizona. That's tough. Alone. No
20 constitutional right, the United States or state
21 constitutional right to have a jury assess the punishment.
22 But given our belief in the goodness of jurors, we give them
23 that duty and responsibility.

24 Ladies and gentlemen, remind -- let me remind you of
25 a few other factors involving all criminal prosecutions.

1 Said that Mr. Murphy had been indicted by a grand jury. The
2 indictment is no evidence of guilt. Indictment is a legal
3 document that gives a defendant formal notice of the
4 allegations against him. Mr. Murphy, through his attorneys,
5 is aware that he's been charged with capital murder. He's
6 been not charged with bank robbery or possession of a kilo of
7 cocaine or burglary, but he knows exactly the allegations
8 against him.

9 That same indictment puts the State on notice of the
10 operative allegations, we call them elements, each of which
11 the State must prove to such a convincing nature beyond a
12 reasonable doubt. Not the Perry Mason standard of beyond a
13 shadow of a doubt, or beyond all doubt. If you were a
14 hundred percent certain, ladies and gentlemen, you'd find
15 your name on the witness list in that questionnaire as
16 opposed to being a potential juror. If the jury finds that
17 one or more of the elements, the operative portions of the
18 indictment have not been proven to the satisfaction of the
19 jury beyond a reasonable doubt, which is true in all cases,
20 not just capital murder, jury must find the defendant not
21 guilty.

22 The burden of proof, the responsibility of going
23 forth with the evidence in all criminal cases lies with the
24 State, the District Attorneys Office. Ladies and gentlemen,
25 this is not one of the Connally 7 cases about which there has

1 been a good bit of media attention in the recent past. This
2 is a case, I can tell you, the victim, complainant, if you
3 will, whose name finds itself in the indictment is Bertie Lee
4 Cunningham. If there are any of you who recall having read,
5 seen, or heard anything in the media about this particular
6 case, that in and of itself will not disqualify you unless
7 your relationship to the circumstances by virtue of media
8 attention or independent knowledge you may have about the
9 case is such that it would compromise your impartiality as a
10 juror. And if you remember, well, I think I may have heard
11 something about that, that's fine. If you have not made up
12 your opinion one way or the other, one way or the other.

13 Ladies and gentlemen, the bailiffs are going to be
14 handing out momentarily some questionnaires. That's the
15 reason you've been given a clipboard. Be absolutely brutally
16 candid and honest with yourself in answering these questions.
17 Let me assure you, and the attorneys have asked me to do this
18 as well, no right or wrong answers to the questions that
19 you're going to be asked. Oh, there's some statistical stuff
20 such as your address, matters such as that, but there's going
21 to be some questions posed to you about certain opinions that
22 you may have about the criminal justice system and they're
23 open-ended questions. We don't grade individuals on a
24 citizenship scale, pass, fail or A or an F. The only thing
25 you are obligated to do by virtue of your oath is to tell the

1 truth. Tell the truth, whatever that may be. Whatever that
2 may be.

3 Ladies and gentlemen, before the questionnaires are
4 passed out, I want to pass on this one final comment to you.
5 Very, very prominent legal scholar once said that second only
6 to serving our country on the field of battle during the time
7 of war, the next greatest responsibility we impose upon a
8 citizen in the United States is serving as a juror in a
9 capital murder case. As I look out there, I realize that all
10 of you appreciate the seriousness of the task at hand. You
11 got dressed this morning, you came down to the courthouse.
12 I'm sure few, if any of you thought, boy, I can't wait to get
13 down there and put on a panel on a possible death penalty
14 case. I don't think so. I don't think so. And I've been
15 doing this for a good little while. I assure you I had a lot
16 more hair before I was called upon constitutionally to
17 preside over cases such as this. I know you take the job
18 seriously. I promise you the attorneys and I take this
19 matter very, very seriously. I know you will as well.

20 Sheriff, may I ask that you hand out the
21 questionnaires.

22 Ladies and gentlemen, we all realize you're a little
23 bit confined and you're going to have to be writing and
24 whatnot. Those of you therefore who want to excuse yourself
25 and go to the bunches outside to have a little more elbow

1 room, feel free to do it. After you have finished the
2 questionnaires, if you would please bring them back in and
3 give them to the bailiffs, then have a bite of lunch. Let me
4 ask that all of you be back here hopefully let's say -- let's
5 say 1:30. That should give you enough time to fill out the
6 questionnaires and get a bite of lunch. And we will see you
7 all back at 1:30, and we will continue at that time.

8 (Recess of proceedings.)

9 (Venireperson brought into courtroom.)

10 THE COURT: Good afternoon, Ms. Campbell, and
11 welcome back.

12 Ms. Campbell, please remain seated, but may I ask
13 that you raise your right hand and again be sworn in.

14 (Venireperson additionally sworn.)

15 VENIREPERSON: I do.

16 THE COURT: Thank you. Ms. Campbell, let me
17 reintroduce those that we see seated at the counsel table.

18 Beginning at the far left, we have the lead
19 prosecutor for the State, a Senior Prosecutor in the Dallas
20 D.A.'s office, Mr. Greg Davis.

21 MR. DAVIS: Good afternoon.

22 THE COURT: Seated next to him is co-counsel
23 Chief Prosecutor at the present time, assigned by Bill Hill,
24 the Dallas District Attorney, to this the 194th District
25 Court, the Honorable Mary Miller.

1 MS. MILLER: Hi.

2 VENIREPERSON: Hi.

3 THE COURT: Moving on to the next table, we
4 begin first with one of the defense attorneys, the Honorable
5 Jennifer Balido.

6 MS. BALIDO: How are you, Ms. Campbell?

7 VENIREPERSON: Hi, fine.

8 MS. BALIDO: Good.

9 THE COURT: Seated next to Ms. Balido, a
10 co-counsel on behalf of the defense, a board certified
11 criminal law specialist, so designated by the State Bar of
12 Texas, as a result of experience and passing a rather
13 difficult examination, the Honorable Michael Byck.

14 MR. BYCK: Ms. Campbell, how are you?

15 VENIREPERSON: Fine.

16 THE COURT: Seated next to Ms. Byck, opposite
17 Ms. Balido, is the defendant, the client, the accused, if you
18 will, Jedidiah Isaac Murphy.

19 THE DEFENDANT: Good afternoon, ma'am.

20 VENIREPERSON: Hi.

21 THE COURT: Ms. Campbell, the -- there is a
22 third attorney on behalf of the defense, Jane Little, a
23 former Chief Prosecutor in the Dallas District Attorneys
24 Office, also board certified. She, however, is outside the
25 courthouse working on some other aspects of this case on

1 behalf of her client, Mr. Murphy, and won't, I understand, be
2 with us this afternoon.

3 Are you ready to proceed with the individual
4 questioning?

5 VENIREPERSON: Yes.

6 THE COURT: Ready as you're ever going to be,
7 huh?

8 VENIREPERSON: Uh-huh.

9 THE COURT: We'll begin with the State, the
10 Honorable Greg Davis.

11 Mr. Davis.

12 MR. DAVIS: Thank you. May it please the
13 Court.

14 YAVONDA CAMPBELL

15 was called as a venireperson by the Court and, after having
16 been first duly sworn, was questioned as follows:

17 Voir Dire Examination

18 By Mr. Davis:

19 Q. Good afternoon again, Ms. Campbell. Ms. Campbell, I
20 just want to kind of set your mind at ease here and let you
21 know there are no right or wrong answers first of all. Most
22 of my questions will deal with what your feelings are about a
23 subject, what your opinions are about a subject. I've done
24 this long enough, I've talked to enough people to know that
25 everybody thinks differently. That's okay. As long as we

1 know how you feel. Okay?

2 A. Okay.

3 Q. Ms. Campbell, when you came down here earlier on the
4 big panel and Judge Entz told you that you had been summoned
5 to hear a capital murder case where the State was seeking the
6 death penalty against Mr. Murphy, do you remember what was
7 your first thought when he told you that?

8 A. I said, ooh, why me. That's what I thought.

9 Q. Okay. I guess that's a pretty common thought. I'm
10 sure that you didn't come down here expecting to be a
11 potential juror on a death penalty case.

12 A. Huh-uh.

13 Q. You've had a little bit of time I guess to think
14 about possibly serving on this jury since Judge Entz told you
15 we're still in the pool to be considered. I know that you're
16 for the death penalty here on your questionnaire, but I also
17 know from experience that some people give this a little
18 thought and maybe when they're sitting up there where you
19 are, you know, it becomes a little bit more real, because
20 this man down here is real, as you can see. He's not an
21 abstract object.

22 If the State of Texas prevails here, he'll be taken
23 to the death chamber one day. He'll be placed on a gurney,
24 and he'll be executed as a result of the verdict in this
25 case. So I just want to let you have a moment to tell me how

1 you honestly feel about really taking part in this case and
2 potentially sitting on this jury and maybe even signing the
3 verdict form that results in Jedidiah Murphy's death.

4 How do you feel about participating?

5 A. I don't want to. I don't want to make that
6 decision, I don't. I don't.

7 Q. And you know again that's -- that's really what --

8 A. It's hard. It's just hard.

9 Q. Right. Dealing with kind of your feelings about the
10 death penalty, you know, it's -- I guess it's the one verdict
11 that can never be reversed, I suppose.

12 Is that kind of what's giving you some misgivings
13 here about that process and not wanting to actually be in
14 judgment of somebody else and making that decision? Is that
15 kind of what I'm hearing you say?

16 A. Uh-huh. I just don't want to judge him, not that
17 way, not to death.

18 Q. Right. You know, a lot of people come down and they
19 say to us, if I get called on another case that's not
20 involving death, maybe a robbery case or maybe a theft case
21 or something like that, I would be happy to serve, but my
22 feelings are strong enough about this that I don't know that
23 I can sit there and listen to the evidence and make that kind
24 of decision. Even if the facts are there, I wouldn't want to
25 be the one put in that position.

1 Is that what you're telling me this afternoon? Am I
2 understanding you correctly?

3 A. Yes, I don't, huh-uh.

4 Q. Okay. Let me talk to you about a couple of things
5 here because first of all, we don't want anybody to have to
6 serve on this jury you'd have a problem with. That's the
7 last thing I want to do is have somebody in the box who's
8 worried about having to make that decision or possibly living
9 with the consequences. We have enough people down here in
10 the pool that we can get 12 jurors without making somebody do
11 that.

12 You said in here in response to one of these
13 questions that if someone is accused of capital murder, he
14 should have to prove his innocence. And you said that you
15 strongly agreed with that statement.

16 Can you tell me a little bit more about your
17 feelings there, how you feel about that?

18 A. Well, I have known -- not from experience, but what
19 I've read, some people go to jail for something they didn't
20 do.

21 Q. Uh-huh.

22 A. And it's important for the defense to prove his
23 innocence, if he's innocent. Of course, you have to prove
24 he's guilty.

25 Q. Right.

1 A. But if he's not innocent -- I mean, if he's not
2 guilty, I would want to know that. I would want to be able
3 to make the right decision if I'm picked to be up there.

4 Q. Right.

5 A. So --

6 Q. And again, I've heard a lot of people say that, that
7 in order to make a decision in this case, they're going to
8 have to have both sides present evidence to them. They want
9 to hear something from the defense over here. They want to
10 hear from the defendant. I've had people say, you know, if I
11 were accused of something like capital murder where my life
12 is on the line and I'm not guilty, I'd be up on that witness
13 stand. I want to tell my side of the story.

14 The law is going to say that, you know, the burden
15 of proof is on the State and this man doesn't have to
16 testify. You know, that's the law, but I know some people
17 have very strong feelings about these things, just the way
18 they look at the process.

19 If Mr. Murphy down here does not testify, you know,
20 if he doesn't take the witness stand, are you going to be
21 able to go back there to that jury deliberation room and put
22 that out of your mind, or are your feelings such that if that
23 happens, that you're going to be thinking about that and
24 wondering why didn't he get up there and tell me what
25 happened? I mean, you tell me honestly how you're going to

1 feel about that.

2 A. Oh, it wouldn't matter, because it's his choice. He
3 has the right -- so -- and some people just can't get up here
4 and explain themselves.

5 Q. Right.

6 A. They can't do it. Even if they're innocent, they'll
7 come up here and look guilty.

8 Q. Right.

9 A. So --

10 Q. Let me give you -- and it goes back again to the
11 State having to prove their case. And that is the law,
12 obviously. Let me give you a couple of examples of what I'm
13 talking about. You know, in this case the indictment tells
14 me what I've got to prove. And there are several things I've
15 got to prove. You know, obviously I've got to prove that
16 Jedidiah Murphy did the killing. I've got to show you that
17 he killed a woman by the name of Bertie Cunningham, that he
18 killed her by either shooting her or drowning her. And that
19 all that happened during the course of a robbery or
20 kidnapping. Now, that's what the law says I've got to
21 prove.

22 But the law also says that I've got to show you that
23 it happened in Dallas County, Texas, and it happened on or
24 about a certain day. All those things are important. They
25 all have to be proved. If I don't prove any of them, you've

1 got to say not guilty. There is a problem here that some
2 people have had. I'm going to run a couple of things by you
3 and see how you feel about these things.

4 Let's say in a capital murder case -- let me just
5 give you an example. Let's say -- and I'll use myself --
6 let's say that I wake up one day and I'm a violent individual
7 and I hate children, and I go out and find the first child
8 care center that I can find. There's a hundred children in
9 there playing, and I fire bomb that thing. I burn it to the
10 ground. I kill every child and every care giver in that
11 place. Nobody sees me do it. You know, I get away
12 scot-free. I'm happy with myself. I go home and celebrate.
13 A couple of days later, oh, let's say I'm out and I see a
14 police officer and I decide, what the heck, I'll just tell
15 him what I've done. I'm proud of it. So I go down to the
16 police station. I'm introduced to a detective. You know, if
17 you watch these shows, the NYPD Blues and all the lawyer
18 shows, you know that certain rights have to be given -- the
19 Miranda warnings have to be given to suspects.

20 Let's say that the detective who talks with me,
21 maybe he's just been tired and he forgets to tell me that
22 I've got a right to a lawyer, and that if I can't afford one,
23 the Court will appoint one for me. I didn't want a lawyer,
24 obviously. I went up and started talking to the officer,
25 started telling him what I had done. So obviously I didn't

1 want one there. He didn't tell me I had a right, but it was
2 never really an issue with me. If he had told me that, it
3 wouldn't have mattered anyway. I go on to tell him exactly
4 how I fire bombed that child care center. I go on to say in
5 the last part of it, I'm happy I did it, and if I ever get
6 out of jail, the first thing I'm going to do is fire bomb
7 another one. There is no doubt that I'm as dangerous as
8 dangerous can be. I'm brought to trial. The only evidence
9 against me, obviously is the confession that's been used.
10 Now, there's no eyewitness. There's no sort of
11 fingerprints. There's no anything, except my confession. In
12 that situation, now, the Judge would tell you, if you have a
13 doubt that all those warnings were given, you've got to throw
14 that statement out.

15 The problem you can obviously see, and let's say the
16 statement is in such detail that it leaves no doubt in your
17 mind that the only person that would know those things would
18 be the person who fire bombed the child care center. So you
19 know good and well I'm guilty as I can be. You know I'm as
20 dangerous as dangerous can be. And you know if I walk out
21 that courtroom, chances are I may be heading to where maybe
22 your child is or someone else's child and I'm going to do it
23 again. But the Judge has told you, you've got to throw the
24 statement out if all the warnings weren't given. If you do,
25 there's no evidence of my guilt there.

1 Now, a lot of people -- some people at least have
2 said to me that's one of those things where I don't know if
3 my conscience could get square with what the law is. Do you
4 mean to tell me I've got to go back there and throw away my
5 common sense of what I really know to be true and say not
6 guilty and walk a dangerous man right out of this
7 courthouse? You mean to tell me I've got to do that? Some
8 people have said, I'm just going to be honest with you. I
9 don't think I could do it if it came down to that. Some
10 people say they can. Some people say they can't.

11 I'm going to put you on the jury right now, Ms.
12 Campbell, and I'm going to put you in that situation. Say
13 the other 11 are saying ain't no way we're going to let a
14 dangerous man like that -- that's not going to be on our
15 conscience. We're going to say guilty or whatever. If they
16 want to reverse that case and do something else down the
17 line, fine, but we're not going to help him walk out of here
18 and hurt somebody else.

19 What are you going to do in that situation?

20 A. You've got to go by the law.

21 Q. Are you going to say --

22 A. You have to abide by the laws, you have to go by --
23 but the Bible also say you have to go by the law of the land,
24 so --

25 Q. That's fair enough. That's what the law would ask

1 you to do. It might be real tough, right?

2 A. Uh-huh.

3 Q. But you have to do that if you're going to be
4 faithful to your oath there. Let's talk about these special
5 issues for a moment. And this is where -- again, this is
6 where the death penalty is different than any other felony
7 case, because if you find someone guilty of capital murder,
8 then we go to a punishment phase. You might hear more
9 evidence. You might not. And then you've got to answer
10 these questions.

11 Now, the first question I want to ask you is this.
12 And I can't go into all the facts of this case. We're not
13 allowed to. Obviously, we want you to hear them for the
14 first time when you're a juror. But I want you to assume for
15 a moment that the victim in this case, Bertie Cunningham, was
16 an 80-year-old woman at the time that she was killed.

17 Do you think that you could still be fair and
18 impartial to the defendant knowing that the deceased was 80
19 years old at the time of her death, or do you think that
20 might affect the way that you look at things?

21 A. No.

22 Q. All right. Special Issue Number 1. Again, you've
23 found in this case that the defendant intentionally killed a
24 woman by the name of Bertie Cunningham, intentionally killed
25 her during the course of a robbery or kidnapping. And when

1 we talk about intentional, we're not talking about an
2 accident. We're not talking about negligence. We're not
3 talking about self-defense, not talking about a situation
4 where somebody is insane, where they don't know right from
5 wrong. Intentional means just that. That it's my conscious
6 desire and intent to take another human life, and I do
7 everything necessary to do that. So you have to assume that
8 you've already decided that the defendant is guilty of doing
9 that beyond any reasonable doubt. You get down to Special
10 Issue Number 1. Let me just kind of give you a choice here.

11 Some people have said to me in the past,
12 notwithstanding what the Judge has already told you about
13 that, that anyone who would take the life of another
14 individual intentionally, you know, during the course of a
15 robbery or kidnapping will always be a continuing threat to
16 society. That's just the type of person they are. So if
17 they find that to be true in a case like this, when they get
18 down to Special Issue Number 1, they're automatically going
19 to answer that yes because that's the type of person in their
20 mind that will always be a continuing threat to society just
21 by the nature. Anybody capable of doing it once, they've
22 kind of shown their true colors, so to speak.

23 How do you feel about that, Ms. Campbell?

24 A. Well, if he did it on purpose and if he -- whatever
25 the reason, if he was robbing her or kidnapping her or say if

1 it was a robbery and he killed her, he might continue to rob
2 and somebody get in his way, he might continue to kill.

3 Q. Uh-huh.

4 A. So --

5 Q. And so --

6 A. He would be a threat. I think he would.

7 Q. Okay. So I guess the key is just believing that he
8 did it, correct?

9 A. Uh-huh.

10 Q. If you believed in your heart of hearts that this
11 man over here really did kill this woman intentionally, no
12 accident about it, and he did that during -- during the time
13 he was either robbing her or kidnapping her, when you get
14 down to Special Issue Number 1, do I hear you saying that
15 you're going to answer yes, that's enough for you to answer
16 that special issue yes?

17 A. Yep.

18 Q. Okay. All right. Let me -- let me ask you, too,
19 when you're taking about Special Issue Number 1, okay, some
20 of these words over here, they don't have legal definitions.
21 So guess what? You're going to get to define them yourself.
22 Okay? And I want to kind of talk with you about some of
23 these words and see how you might look at them. Whether
24 there is a probability that the defendant would commit
25 criminal acts of violence --

1 MR. DAVIS: Judge, I believe that we have an
2 agreement at this time.

3 (Ms. Campbell Excused From Consideration)

4 THE COURT: Thank you, Ms. Campbell. The
5 attorneys have authorized me to excuse you from further
6 consideration.

7 VENIREPERSON: Oh, good. Thank you.

8 MR. DAVIS: Thank you, Ms. Campbell.

9 MR. BYCK: Judge, we agree on Mr. Rose.

10 (Recess of proceedings.)

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Reporter's Certificate

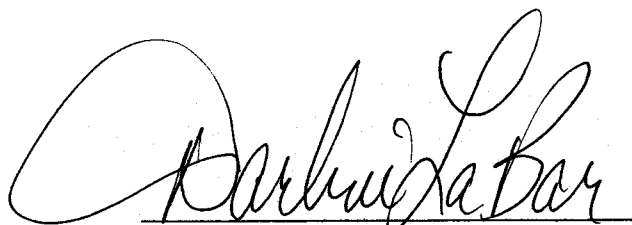
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 19th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

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TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney
Crowley Criminal Courts Building
Dallas, Dallas County, Texas 75207
Phone: 214-653-3600

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550
MS. MARY MILLER, A.D.A., SBOT # 21453200
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 3rd day of May, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:
Proceedings reported by machine shorthand, computer
assisted transcription.

DARLINE W. LABAR, OFFICIAL REPORTER

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P R O C E E D I N G S

THE COURT: Counsel may be seated.

(Venire panel brought into courtroom.)

THE COURT: Ms. King, are you ready?

THE REPORTER: Yes, sir.

THE COURT: Continuation of Cause

F00-02424-NM, case styled the State of Texas versus Jedidiah
Isaac Murphy.

Is the State prepared to continue?

MR. DAVIS: The State's ready, Your Honor.

THE COURT: Is the defense prepared to
continue?

MS. BALIDO: Defense is ready, Your Honor.

THE COURT: Let the record reflect absent my
dictating the contrary into the record the person of the
accused, Jedidiah Isaac Murphy, will be in court at all times
during this hearing.

Good morning, ladies and gentlemen. I'm Judge
Harold Entz. I'm pleased to welcome all of you to this the
194th District Court. May I ask all of you to please rise,
raise your right hands, be prepared to take an oath as a
prospective juror.

Ladies and gentlemen, for purposes of your
individual religious belief or personal conscience, at your
option, the operative verb will be either "swear" or

1 "affirm."

2 (Oath given to venire panel.)

3 THE COURT: Thank you. Please lower your
4 hands and again be seated.

5 Ladies and gentlemen, at the outset allow me, if I
6 may, to introduce the individuals whom you see seated at the
7 counsel tables before you.

8 Will begin with the counsel table to the far right.
9 Both of these individuals are Dallas County Assistant
10 District Attorneys, beginning first with lead counsel for the
11 State in this prosecution, one of the Senior Prosecutors in
12 the Dallas District Attorneys Office, the Honorable Greg
13 Davis.

14 Mr. Davis.

15 MR. DAVIS: Good morning.

16 THE COURT: Seated next to Mr. Davis is his
17 co-counsel in this prosecution. At the present time she
18 occupies the role of Chief Prosecutor assigned to this the
19 194th District Court, so designated by Dallas District
20 Attorney Bill Hill. Pleased at this time to introduce the
21 Honorable Mary Miller.

22 Ms. Miller, if you please.

23 MS. MILLER: Good morning, ladies and
24 gentlemen.

25 THE COURT: Moving on to the defense table, we

1 begin first with two of the three defense attorneys in this
2 matter, beginning first with the Honorable Jennifer Balido.

3 Ms. Balido.

4 MS. BALIDO: Good morning.

5 THE COURT: Ms. Balido is a former Assistant
6 District Attorney.

7 Moving down the table, we have next another one of
8 the defense attorneys. This gentleman is a board certified
9 criminal law specialist, so designated by the State Bar of
10 Texas, as a result of experience, training, and having
11 successfully completed a very competitive and difficult
12 examination. I'm pleased at this time to introduce the
13 Honorable Michael Byck.

14 MR. BYCK: Good morning.

15 THE COURT: Seated next to Mr. Byck, opposite
16 Ms. Balido, is the accused, the defendant, if you will, Mr.
17 Jedidiah Isaac Murphy.

18 THE DEFENDANT: Good morning.

19 THE COURT: There is a third attorney
20 representing Mr. Murphy who is not with us this morning. Her
21 name is Jane Little. She is a former Chief Prosecutor in the
22 Dallas District Attorneys Office. As is true with Mr. Byck,
23 Ms. Little also is a board certified criminal law
24 specialist. She is addressing other matters with regard to
25 this particular trial outside the courthouse today, and I

1 anticipate and have reason to believe that she may well not
2 be with us during the proceedings here this morning.

3 Ladies and gentlemen, we will move right into the
4 matters at hand. Let me explain to you right up front, leave
5 no card unturned, you have been summoned to this courtroom as
6 a prospective juror in a case styled the State of Texas
7 versus Jedidiah Isaac Murphy. Mr. Murphy has been indicted
8 by a Dallas County grand jury. He has been indicted for the
9 offense of capital murder. The State has made known its
10 intention to seek the death penalty.

11 A comment or two must be made by me at this time
12 pursuant to the Code of Criminal Procedure about certain
13 aspects of this type of a prosecution. A bit of
14 constitutional history.

15 Ladies and gentlemen, almost 30 years ago, 1972 to
16 be exact, the United States Supreme Court in Washington,
17 D.C., in a case styled or titled or called Furman versus
18 Georgia, ruled at that time that the capital murder statute
19 in place in Georgia was unconstitutional, saying that it was
20 a violation of the 8th Amendment and the 14th Amendment of
21 the United States Constitutions. In reading that case in
22 became very apparent to those of us outside Georgia that that
23 particular opinion was applicable also to every other state
24 in the Union at that time that had the death penalty.
25 Legislatures throughout the country taking that opinion into

1 effect, various and sundry means, endeavored on a
2 state-by-state basis to fashion a capital murder statute that
3 would pass United States Supreme Court approval.

4 In 1976 there were a trilogy or three cases, one of
5 which Jurek versus Texas, which the United States Supreme
6 Court ruled that the statutory means that the Texas
7 legislature had put in place post-Furman versus Georgia did
8 meet constitutional muster or approval. We have refined in
9 Texas, or the legislature has, the Texas statute since that
10 time.

11 Back in 1972 one of the faults that the United
12 States Supreme Court had with Georgia and by implication with
13 all the other states in their capital murder statute was that
14 the statutes then in place gave what the United States
15 Supreme Court called unbridled discretion with regard to the
16 imposition of the death penalty. In an effort to address
17 that constitutional complaint from the nine members of the
18 Supreme Court, those that were on the court at that time,
19 states have now to pass constitutional muster or approval,
20 have had to do several things, not the least of which murder
21 alone, without any kind of an aggravating factor, and I'll
22 get into those momentarily, is not the type of a homicide for
23 which the death penalty is even possible.

24 The United States Supreme Court has said that there
25 must be a homicide, an intentional murder, plus some sort of

1 an aggravating factor or factors before a death penalty can
2 be constitutionally inflicted. Various states have addressed
3 it in different manners.

4 Georgia and Florida, for instance, have a laundry
5 list, if you will, of aggravating factors that the jurors are
6 called upon to consider in the penalty stage of the trial.
7 And in those two states if the jury determines the
8 aggravating factors outweigh the mitigating factors, the
9 recommendation, and I put that in quotes, from the jury to
10 the Judge is either life or death. Not so Texas.

11 Texas addressed it in a little bit different
12 fashion. Texas not only do we put the aggravating factor as
13 a part of the original indictment, but there are also some
14 additional circumstances which must be taken by a jury into
15 consideration before a death penalty can be inflicted.

16 Now, how does the Texas statute work? Number one,
17 for there to be a death penalty it, number one, must be a
18 murder. That's a given. Used to be sexual assault or what
19 we used to call rape could be considered a murder -- could be
20 considered death penalty, no longer. Number one, it must be
21 a murder. And in Texas the aggravating factors are as
22 follows: A murder, number one, during the commission of a
23 robbery, a burglary, a kidnapping, an arson, or a sexual
24 assault. The status of certain individuals that are victims
25 of an intentional murder are also those aggravating factors

1 for which the death penalty can be imposed. A police officer
2 or a fireman or a guard in a penal institution murdered
3 during the course of their duties can be a capital murder,
4 death penalty eligible case.

5 Also, age is an aggravating factor. The intentional
6 killing of a child under the age of 6 can be death penalty
7 eligible. Note I said eligible. Doesn't mean that it's
8 automatically imposed. And we're going to be getting into
9 that momentarily. Also, the murder of two or more persons in
10 the same criminal episode, taking into consideration not only
11 two, but the Timothy McVeigh tragedy of a few years ago, that
12 type of a situation. Serial murders, the Ted Bundys, the
13 Jeffrey Dahmers, individuals such as that. A continuing
14 course of conduct of murders can be death penalty. Also,
15 murder for hire. Hire a hitman or one as the case may be to
16 kill somebody. Also, if you take the life of an individual
17 for remuneration, for insurance money, matters such as that,
18 that is a death penalty eligible case.

19 Now, just because a jury, not only the 194th
20 District Court, this particular court, but anywhere in this
21 building or anywhere in Texas, just because a jury hearing a
22 capital murder case finds a defendant guilty of capital
23 murder, that does not any way, shape, or form automatically
24 equate into a death penalty. Far from it. Far from it.
25 Many capital cases are tried in Dallas County and throughout

1 Texas wherein the State does not seek the death penalty. An
2 individual in Texas found guilty by a jury or a court, if the
3 jury is waived, guilty of capital murder, has only two
4 options available statutorily for punishment, either life in
5 the penitentiary or death by lethal injection. The latter, I
6 think, speaks for itself.

7 A life sentence for capital murder in Texas, again
8 murder plus the aggravating factor or factors, resulting in a
9 life sentence results at the present time in Texas and it has
10 been for a number of years now, 40 -- four zero, calendar
11 years in custody before being eligible for release on
12 supervision called parole. No guarantee that after 40 years
13 if an individual incarcerated that long survives is going to
14 automatically get out in 40 years. Regardless of
15 rehabilitation efforts, regardless of good conduct, matters
16 such as that during those 40 years, doesn't do anything to
17 lessen it to other than 40 years. Doesn't even get it down
18 to 39 years, 364 days. 40 years, day-for-day, week-for-week,
19 month-for-month.

20 Now, what are the circumstances under the Texas
21 statutory process that changes a life sentence to death?
22 Again, keeping in mind that a verdict of guilty of capital
23 murder is either life or death. Not automatic death. And I
24 would submit to you that the United States Supreme Court has
25 made it abundantly clear to all of us in this country that

1 there is no way a State legislature or the United States
2 Congress could craft or put into place a statute where if you
3 commit the offense of murder and the aggravating factor,
4 automatically without question it's a death case. Would not
5 pass constitutional approval.

6 There is an individual in this courtroom who is
7 convinced that that should not be the law. This particular
8 individual. I will not name who this individual is. This
9 individual believes that espionage, treason, if you will,
10 during the time of war and if that treasonable act or
11 traitorous act results in the harm or death of any United
12 States citizen, you should take them out and shoot them after
13 a trial, after appeal, but regardless -- and it's not I who
14 thinks that. I don't condone treason, but there is a
15 constitutional impediment that precludes that, and that's the
16 matter of mitigating circumstances which we'll get into
17 momentarily.

18 Now, if in Texas a jury finds a defendant, and this
19 is not just this court, this is not just something that the
20 attorneys and I dreamed up this morning while waiting for you
21 folks to come up here from the Central Jury Room. But in a
22 capital murder case which the State is seeking death, before
23 the sentence can be death and not life, certain circumstances
24 must be brought to the attention of the jury and depending
25 upon their answers to special issues, the result is either a

1 life or a death sentence.

2 Now, I mentioned a moment or so ago that in Georgia
3 and Florida and other states the jury makes a, quote,
4 unquote, recommendation to the trial judge. Not so Texas.
5 Not so Texas. Other states the Judge acts, if you will, as a
6 thirteenth juror. Say, no, ladies and gentlemen of the jury,
7 I don't think this should be death, I think it should be
8 life. No, ladies and gentlemen, I don't think it should be
9 life, I think it should be death. Not so Texas. Not so
10 Texas. Jury does not make a recommendation to a trial
11 judge. Their decision is either life or death, depending
12 upon their answers to the special issues that you see to my
13 left.

14 Not that you can't read, but some of you may have
15 not brought your eyeglasses with you, may be a bit small, so
16 let me read it to you, after which I'll explain the effect of
17 the answers.

18 Ladies and gentlemen, Special Issue Number 1 reads
19 as follows. This is statutory. This is what the legislature
20 down in Austin has given us. These are the matters about
21 which the United States Supreme Court has pored over and
22 considered, debated, and has approved. Number one, whether
23 there is a probability that the defendant would commit
24 criminal acts of violence that would constitute a continuing
25 threat to society.

1 Special Issue Number 2 reads whether, taking into
2 consideration all the evidence, including the circumstances
3 of the offense, the defendant's character and background, and
4 the personal moral culpability of the defendant, there is a
5 sufficient mitigating circumstance or circumstances to
6 warrant that a sentence of life imprisonment rather than a
7 death sentence be imposed.

8 All right. Let's take momentarily Special Issue
9 Number 1. I would submit to each of you that the way that
10 Special Issue Number 1 is grammatically constructed, the
11 answer at the commencement of the deliberations by the jury
12 in the penalty stage of the trial, the answer to that
13 question is no. It's not there is a probability. The
14 question is posed whether there is a probability.

15 The burden of proof, the responsibility of going
16 forth with the evidence on Special Issue Number 1 lies with
17 the prosecuting attorneys, Mr. Davis, Ms. Miller. Jury may
18 take into consideration all of the evidence presented at the
19 guilt/innocence stage of the trial and also other evidence
20 that may not be admissible in the guilt/innocence stage of
21 the trial, but is under the rules of evidence in Texas
22 admissible in the penalty stage of the trial. Therefore
23 taking all of that evidence into consideration, if the jury
24 unanimously decides Special Issue Number 1 should be answered
25 yes, only then need the jury go on to address the matters

1 presented in Special Issue Number 2.

2 Legal scholars, attorneys, judges have said Special
3 Issue Number 1 is the future dangerousness question, somewhat
4 asking the jury to predict the future conduct of the
5 defendant. If the answer to that question, after
6 deliberation, is no, it remains no. Where it begins or in
7 the penalty stage of the trial the jury comes out in the
8 courtroom with that decision, it's a life sentence. 40
9 years. 40 years. If the jury though, after considered
10 deliberation, answers Special Issue Number 1 yes, only then
11 need the jury go on to address the matters contained in
12 Special Issue Number 2.

13 Now, let's think where a jury is if they get to
14 Special Issue Number 2. By virtue of finding a defendant
15 guilty of capital murder, they've already found a murder with
16 an aggravating factor. In this case the indictment alleges a
17 murder during the course of a robbery and/or a kidnapping.
18 You've already found that by virtue under my hypothetical
19 scenario of guilty of capital murder. Before you get to
20 Special Issue Number 2, you have already determined -- and
21 once again, this is a hypothetical, that the defendant is a
22 future danger. You're two-thirds of the way to a death
23 sentence.

24 Special Issue Number 2 gives in Texas jurors an
25 opportunity to sit back, reflect, reconsider all of the

1 evidence presented at the entire trial, and determine whether
2 or not there is mitigating evidence presented, circumstance
3 or circumstances, if you will, as a result of which the
4 defendant should live and not die. Not going to get on the
5 elevator and go down and go home. We've got 40 years. The
6 United States Supreme Court in a couple of cases over the
7 last two or three years have instructed trial judges
8 throughout the country not to define mitigating
9 circumstances. Mitigating circumstances therefore whatever
10 the jury determines it to be.

11 To be a constitutionally qualified juror in a
12 capital murder case, a juror must be willing to tell
13 themselves and then of necessity the rest of us, that they
14 would be willing to listen and consider, if presented,
15 mitigating evidence and then determine whether as a result of
16 it a defendant should live and not die.

17 Let me give you an example of some matters that
18 jurors have suggested to us not only in this trial, but I've
19 tried a number of these cases over the past few years. Have
20 suggested to us under a case-by-case basis they might
21 consider mitigating. Mental health. Mental retardation.
22 Other types of mental health issues or concerns. Abuse as a
23 child, be it sexual, physical, or the like. Circumstances of
24 the defendant's past. This be an aberration, might have been
25 an Eagle Scout, might have been an alter boy, gone to church,

1 Sunday School, perfect attendance, that might be a mitigating
2 circumstance. Mitigating evidence is whatever a juror
3 determines it -- determines it to be. Just because a juror
4 hears mitigating evidence does not mean that they have to
5 give, pursuant to this instruction, a life sentence, but it
6 gives the jury a safety valve, a safety net. This is a mercy
7 question. Let's admit to us, ourselves, what it is. This is
8 a mercy question. Is there something because of which this
9 defendant should live and not die? This gives the jury an
10 opportunity. This is their out. But if there is no
11 circumstance or circumstances, at least they've considered
12 it, made a determination that it is not present, and so be
13 it.

14 Because, ladies and gentlemen, let me make certain
15 each of you are abundantly clear of this, if a jury answers
16 Special Issue Number 1 yes, future dangerousness in the
17 affirmative, and answers Special Issue Number 1 no (sic), I
18 am required to sentence a defendant to death. And again, I'm
19 not a thirteenth juror. That is the stark reality of the
20 answers to those questions. Any other configuration of
21 answers other than yes and no is a life sentence.

22 I don't want anybody to think that the attorneys or
23 I are hiding any cards under the table. We are not. We have
24 no secrets. We require in Texas an informed jury so they
25 exactly know what the circumstances are going into it.

1 That's why in Texas, unlike most other states, it takes so
2 very long to pick a jury in a capital murder case. Because
3 of all of the procedural hurdles that we jump to make certain
4 we have an intelligent, informed jury knowing the
5 circumstances of their decision.

6 In a moment or so the bailiffs are going to hand out
7 the questionnaires. That's why you have a clipboard and have
8 a -- given a pen on your way in. Comment or two though
9 before the questionnaires are handed to you.

10 These are matters about which we all should have
11 learned in middle school or high school, a refresher. Though
12 Mr. Murphy has been indicted, the indictment, the legal
13 document charging him with a felony offense, is no evidence
14 of guilt. The indictment is not self-proving. The
15 indictment gives the defendant specific notice of the
16 criminal allegation pending against him. That same document
17 gives the State notice of those matters about which they
18 must, if they can, convince a jury beyond a reasonable
19 doubt -- not the Perry Mason standard of beyond a shadow of a
20 doubt or not a hundred percent certainty -- beyond a
21 reasonable doubt before a jury may find a defendant guilty.

22 As Mr. Murphy sits before you this morning, he must
23 by each of you be presumed to be innocent. That presumption
24 remains with him, as it does any defendant, any criminal
25 case, be it down in municipal court on a traffic infraction,

1 or a capital murder case, the presumption of innocence is
2 guaranteed to each of us at the commencement or beginning of
3 a criminal prosecution. The responsibility of proving the
4 allegation, if they can, lies with the prosecuting
5 authorities, the District Attorneys Office, if you will. Mr.
6 Murphy is not obligated to prove his innocence. It's the
7 obligation of the State though to prove him, if they can,
8 guilty beyond a reasonable doubt.

9 If a jury in a case such as this should find beyond
10 a reasonable doubt the murder part to have been
11 satisfactorily proven to them but not the aggravating factor,
12 jury does not just say not guilty. But if they find under a
13 hypothetical murder, but not the aggravating factor, the jury
14 returns with a verdict of what we call a lesser included
15 offense, that being murder. Not capital murder, but murder.
16 Murder, not capital murder, in Texas is one of a number of
17 offenses in the Penal Code of Texas designated by the
18 legislature as a first degree felony. A first degree felony
19 murder, not capital murder, has a penalty range not less than
20 5 nor more than 99 years or life, with an optional fine not
21 to exceed \$10,000. Did not want any of you to think, well,
22 if they prove murder but don't prove the aggravating factor,
23 you know, does this murderer go home? No. Five to 99 years
24 or life. You may think, wow, 5 years for murder. Ladies and
25 gentlemen, just a second.

1 I don't agree with everything that the legislature
2 does, I assure you, and I would be surprised if any of you
3 did as well. But in this aspect I do. By leaving the
4 penalty range for murder so wide, 5 to 99 years or life, the
5 legislature has given juries in Texas every opportunity to
6 consider all kinds of circumstances and relationships that
7 exist between parties in determining the punishment of a
8 murder case. Been a trial judge for 27 and a half years,
9 about half of which on the district bench before that I was
10 on a misdemeanor bench. The last number of years presiding
11 over, I can't tell you how many murder cases, I have seen
12 cases in which jurors have, and I totally agreed, 5 years in
13 the penitentiary. Not going to go into circumstances, but
14 trust me, there are relationships such that 5 years under the
15 circumstances can be and has been found by 12 folks just like
16 you to be very appropriate. We're not asking you at this
17 point to figure out a circumstance. If you want to give me a
18 call on the telephone, I'll be more than happy to share with
19 you after this trial has been completed some circumstances in
20 which I think you would agree with me that 5 years is
21 extremely appropriate.

22 You have taken an oath. You are under oath when you
23 fill out the questionnaire. There are no right or wrong
24 answers to the questions. Oh, there's a few about address
25 and matters such as that, which, of course, is either a right

1 or wrong. But you'll be asked about your opinion about
2 various and sundry aspects of the criminal justice system.
3 Neither the attorneys nor I grade prospective jurors on a
4 citizenship level with regard to their answers, with regard
5 to their feelings and opinions about the death penalty. We
6 don't do that. We only ask that you be candid and honest
7 with yourself and therefore with us when you answer these
8 questions.

9 It has been said by a very prominent legal scholar
10 that second only to representing our country on the field of
11 battle during the time of war, the next highest civic duty we
12 can impose upon a citizen is to serve as a juror in a capital
13 murder case. The attorneys, Mr. Murphy, and I are aware that
14 you look upon this as a very serious matter. Very serious to
15 the person of the accused, Mr. Murphy. It's very serious to
16 the family of the victim, the survivors, if you will.

17 As a juror you are not an advocate. You will be
18 along with me, during this trial, a judge. It will be your
19 responsibility, if selected as one of the 12 jurors, to be
20 one of the absolute 12 judges of the facts. On the other
21 hand, I am obligated by virtue of holding this office to be
22 the Judge or arbiter of questions of law. So together, the
23 12 judges called jurors and I will work through this very,
24 very difficult procedure.

25 Questionnaires will now be handed out to you. We

1 realize that you are a little bit confined and you may need a
2 little more elbow room. So those of you that wish to excuse
3 yourself and go out to the hallway to perhaps have a little
4 more room, you're invited and welcome to do that. As I look
5 at my watch it's about 10:30, 10:31 the clock on the wall.
6 Let me ask you after you've completed the questionnaire, if
7 ask you would come back into the courtroom, those of you that
8 leave or those of you that chose to remain in the courtroom
9 after you've completed the questionnaire completely, hand it
10 to one of the bailiffs, you're then excused. Let me ask that
11 all of you be back at here at 12 o'clock. We will continue
12 at that time.

13 Sheriff, may I ask that you turn -- present the
14 questionnaires to the jurors.

15 (Recess of panel with times to return)

16 THE COURT: Good afternoon, Ms. Hamilton.
17 Welcome back. May I ask you to raise your right hand and
18 again be sworn in.

19 (Venireperson additionally sworn.)

20 THE COURT: Thank you. Lower your hand.

21 Ms. Hamilton, let me reintroduce the individuals at
22 the counsel table. It's been a little while since you were
23 last here.

24 Far left, lead prosecutor or the State, a Senior
25 Prosecutor in the Dallas District Attorneys Office, Mr. Greg

1 Davis.

2 MR. DAVIS: Good afternoon.

3 THE COURT: Ms. Hamilton, moving down the
4 counsel table -- excuse me, next have co-counsel for the
5 State, Chief Prosecutor, 194th District Court, the Honorable
6 Mary Miller.

7 MS. MILLER: Good afternoon, Ms. Hamilton.

8 THE COURT: Moving on to the defense table, we
9 begin first with one of the three defense attorneys, the
10 Honorable Jennifer Balido.

11 MS. BALIDO: Good afternoon.

12 THE COURT: Next to Ms. Balido is one of her
13 co-counsels, board certified criminal law specialist here in
14 Texas, the Honorable Michael Byck.

15 MR. BYCK: Good afternoon, ma'am.

16 THE COURT: Seated next to Mr. Byck, opposite
17 Ms. Balido, is the accused, the defendant, Jedidiah Isaac
18 Murphy.

19 THE DEFENDANT: Good afternoon.

20 THE COURT: There is a third attorney
21 representing Mr. Murphy not with us this afternoon, working
22 on some matters pertinent to this case outside the
23 courthouse -- excuse me, this afternoon. Her name is Jane
24 Little. She is also a board certified criminal law
25 specialist and former Chief Prosecutor in the Dallas District

1 Attorneys Office.

2 Ms. Hamilton, we will begin, assuming you're ready,
3 with the State. Are you ready?

4 VENIREPERSON: I'm ready.

5 THE COURT: Mr. Davis.

6 MR. DAVIS: Thank you. May it please the
7 Court.

8 REBEKAH HAMILTON

9 was called as a venireperson by the Court and, after having
10 been first duly sworn, was questioned as follows:

11 Voir Dire Examination

12 By Mr. Davis:

13 Q. Good afternoon again, Ms. Hamilton. How are you?

14 A. I'm okay.

15 Q. All right. Well, just relax, because I think the
16 Judge has previously told you, there aren't going to be any
17 right or wrong answers this afternoon. There may be some
18 questions that may require you to think a bit and to -- they
19 may be tough questions, but there aren't any right or wrong
20 answers. As long as you tell us how you honestly feel about
21 a subject, that's all we expect from you. Okay?

22 THE COURT: May be tough, but they'll be very
23 fair.

24 Q. (By Mr. Davis) Ms. Hamilton, just to start off
25 with, I see that you work for Love Field Antique Mall. I

1 didn't realize that Jerry Beason owned the mall.

2 A. Yes, he does.

3 Q. You know, I've known Jerry Beason for a number of
4 years, had cases with him several years ago. I take it that
5 your employment by Mr. Beason, he's an attorney, he practices
6 down here, or at least he used to, would that have any affect
7 whatsoever on you hearing a case like this?

8 A. (Nods head.)

9 Q. Okay. Let's just start and let's talk about the
10 death penalty a little bit. I see from your questionnaire
11 that you're in favor of the death penalty.

12 Can you tell me a little bit why you're in favor of
13 the death penalty?

14 A. I think sometimes there's nothing else that we can
15 do as a society, other than a death penalty.

16 Q. Uh-huh. Secondly, you know, sometimes people will
17 tell me they're in favor of the death penalty, but they're
18 not sure that they can personally take part in a case like
19 this. You know, they'll say I agree with the law, think it
20 serves a worthwhile purpose, but it's another matter perhaps
21 to sit on a jury and have to return a verdict that might
22 return -- might, you know, result in the death of another
23 individual.

24 How do you feel about that?

25 A. Well, I have to say since I was here last, that has

1 weighed heavily on my mind. It's like worst case scenario.
2 If I were on the jury and the defendant were found guilty
3 beyond a reasonable doubt, I think that would be a very
4 difficult decision to make.

5 Q. Okay. Well, and again only -- okay. I think that
6 Mr. Byck, on behalf of Mr. Murphy, is in agreement with me to
7 excuse you, with the Court's approval. And the reason being,
8 we certainly don't want to put somebody in that kind of
9 position where they're going to have some moral dilemma in
10 reaching a verdict here, and, you know, we have other people
11 to talk to this afternoon. And I know that you've served on
12 a jury before.

13 A. Yes, I did.

14 Q. So obviously you've made a fine juror in the past,
15 and any other type of case I'm sure you would also so I
16 appreciate --

17 A. Well, I appreciate it.

18 (Ms. Hamilton Excused From Consideration)

19 THE COURT: Thank you, Ms. Hamilton.

20 VENIREPERSON: And I have to say I'm so
21 relieved.

22 (Venireperson excused.)

23 THE COURT: Benito Garcia.

24 (Venireperson brought into the courtroom.)

25 THE COURT: Good afternoon, Mr. Garcia.

1 Welcome back.

2 VENIREPERSON: Good afternoon, everybody.

3 THE COURT: Raise your right hand, please.

4 (Venireperson additionally sworn.)

5 THE COURT: You may lower your hand. Mr.

6 Garcia, allow me to reintroduce the individuals whom we see
7 seated at the counsel table.

8 Beginning with the table to the left as we look at
9 them, begin first with the lead prosecutor for the State in
10 this case, the Honorable Greg Davis.

11 MR. DAVIS: Afternoon.

12 THE COURT: One of the Senior Prosecutors at
13 the present time in the Dallas District Attorneys Office.

14 Co-counsel in this case is the Chief Prosecutor --
15 excuse me, assigned to this the 194th District Court, the
16 Honorable Mary Miller.

17 MS. MILLER: Good afternoon.

18 VENIREPERSON: Hello.

19 THE COURT: Moving on to the next table, Mr.
20 Garcia, we begin first with one of the attorneys representing
21 the defendant, the Honorable Jennifer Balido.

22 MR. BYCK: How are you, Mr. Garcia?

23 VENIREPERSON: Hello, ma'am.

24 THE COURT: Next attorney going down the
25 table, the Honorable Michael Byck, board certified criminal

1 law specialist, so designated by the State Bar of Texas.

2 Mr. Byck.

3 MR. BYCK: Good afternoon, sir.

4 VENIREPERSON: Yes, sir.

5 THE COURT: Seated next to Mr. Byck, opposite
6 Ms. Balido, is their client, the accused, the defendant, if
7 you will, Jedidiah Isaac Murphy.

8 THE DEFENDANT: Good afternoon.

9 VENIREPERSON: Hello, sir.

10 THE COURT: Mr. Garcia, there's a third
11 attorney representing Mr. Murphy, in addition to the two whom
12 I've introduced, Jane Little, a former Chief Prosecutor and
13 board certified criminal law specialist, is also on the
14 defense team. She is attending to some matters with regard
15 to the case outside the courthouse this afternoon. So she --
16 if you're one of the jurors, you'll see her at the counsel
17 table in a very active trial capacity once the testimony
18 begins.

19 Mr. Garcia, we're about to begin with your
20 individual questioning. To their questions, there's no right
21 or wrong answers as long as they're honest. We have no
22 reason to doubt they'll be anything other than that.
23 Assuming you're ready to begin, we're ready.

24 Are you set to go?

25 VENIREPERSON: Yeah.

1 THE COURT: Take a deep breath. Don't worry.
2 The questions may be difficult from an ethical standpoint,
3 but they won't cause you to have any other difficulties other
4 than -- may put you in some little ethical moral dilemma, but
5 that's just the nature of the type of case. We begin with
6 State, the Honorable Greg Davis.

7 Mr. Davis.

8 MR. DAVIS: Thank you. May it please the
9 Court.

10 BENITO GARCIA
11 was called as a venireperson by the Court and, after having
12 been first duly sworn, was questioned as follows:

13 Voir Dire Examination

14 By Mr. Davis:

15 Q. Good afternoon, Mr. Garcia. How are you?

16 A. Fine, sir. Yourself?

17 Q. Good. Mr. Garcia, for the next few minutes I'm
18 going to talk with you. As the Judge indicated, we'll talk a
19 little bit about the death penalty here in Texas, may talk
20 about some general principles that apply in this type of
21 case. As he just told you, there aren't any right or wrong
22 answers. As long as you tell us how you honestly feel, then
23 that's all we can expect from you. Okay?

24 Mr. Garcia, I just want to start off and have you
25 tell me, how do you honestly feel about the death penalty in

1 Texas? Are you for it? Against it? How do you honestly
2 feel about it?

3 A. I don't oppose it because I guess we all have our
4 choices to make, the right choice, you know, and if you do
5 something that -- I believe that we all have time to think
6 about it, really, even though you're mad, and you can still
7 stop what you're doing.

8 Q. Uh-huh.

9 A. And if -- you know, if you did it -- did do it -- I
10 mean, if you -- you have to pay. We can't judge you, but,
11 you know, if you take my life, I hope somebody tries to, you
12 know, make sure that you get punished for it.

13 Q. Right. Okay. Are there any cases that you've heard
14 about recently, maybe you've seen it in the news, that you
15 thought might be the kind of case where the death penalty
16 might be appropriate?

17 A. Well, cold-blooded murders, yeah. Like that one
18 lady that those kids just took her car and killed her for no
19 reason. I mean, that's pretty bad.

20 Q. Okay. Let me just -- let me talk to you about
21 possibly serving on this jury because I've had people in the
22 past who have told me that they're in favor of the death
23 penalty, but they're not sure that they'd like to sit on this
24 type of jury and actually return a verdict that would result
25 in someone else's death because that's really what we're

1 seeking in this case. The State is seeking the death penalty
2 against Jedidiah Murphy. We hope that the jury will return a
3 verdict that requires Judge Entz to sentence him to death.
4 And our goal is to see that he dies in Huntsville due to
5 lethal injection.

6 How do you honestly feel about sitting on this jury
7 and returning a verdict against this man that might result in
8 his death?

9 A. You got to really -- you know, you got to really
10 believe that he did it.

11 Q. Uh-huh.

12 A. And if it was a cruel way to do it -- I mean, if
13 it's -- it's kind of hard, but, you know, it's --

14 Q. Let me just -- let me just --

15 (Mr. Garcia Excused From Consideration)

16 THE COURT: Mr. Garcia, the attorneys have
17 authorized me to inform you that they have excused you from
18 consideration.

19 VENIREPERSON: Thank you.

20 (Venireperson excused from courtroom.)

21 (Venireperson returned to courtroom.)

22 THE COURT: Good afternoon and welcome back.
23 Ask that you raise your right hand again and be sworn in,
24 please.

25 (Venireperson additionally sworn.)

1 THE COURT: Thank you. Lower your hand, Mr.
2 Wright.

3 Mr. Wright, let me reintroduce the individuals whom
4 you see seated at the counsel tables.

5 Beginning with the with the counsel table to the
6 left, we have lead counsel for the State, a Senior Prosecutor
7 in the Dallas District Attorneys Office, the Honorable Greg
8 Davis.

9 MR. DAVIS: Good afternoon.

10 THE COURT: Next to him is co-counsel, present
11 time occupying the role Chief Prosecutor in this the 194th
12 District Court, the Honorable Mary Miller.

13 MS. MILLER: Good afternoon.

14 THE COURT: Moving on to the next table, a
15 former Assistant District Attorney, one of the three
16 attorneys representing the defendant in this case, the
17 Honorable Jennifer Balido.

18 MS. BALIDO: How are you, Mr. Wright?

19 VENIREPERSON: Fine.

20 MS. BALIDO: Good.

21 THE COURT: Seated next to Ms. Balido, a
22 co-counsel, board certified criminal law specialist, by
23 training, experience, and competitively passing a very
24 difficult examination, the Honorable Michael Byck.

25 MR. BYCK: Good afternoon, sir.

1 THE COURT: Seated next to Mr. Byck, opposite
2 Ms. Balido, is their client, the accused, the defendant, if
3 you will, Mr. Jedidiah Isaac Murphy.

4 THE DEFENDANT: Good afternoon.

5 THE COURT: The third attorney representing
6 Mr. Murphy who's not with us this afternoon, a former Chief
7 Prosecutor in the Dallas District Attorneys Office. Also as
8 is true with Mr. Byck, she also is a board certified criminal
9 law specialist. Her name is Jane Little. She is attending
10 to some matters with regard to this case outside the
11 courthouse this afternoon.

12 Mr. Wright, before you leave us in about an hour or
13 so you will know whether or not you remain under
14 consideration by the Court as a prospective juror in this
15 case. If you're prepared to proceed, we are as well.

16 VENIREPERSON: Okay.

17 THE COURT: Are you set to go?

18 VENIREPERSON: Yeah.

19 THE COURT: We'll begin with the State, the
20 Honorable Greg Davis.

21 Mr. Davis.

22 MR. DAVIS: Thank you. May it please the
23 Court.

24 ROBERT WRIGHT
25 was called as a venireperson by the Court and, after having

1 been first duly sworn, was questioned as follows:

2 Voir Dire Examination

3 By Mr. Davis:

4 Q. Good afternoon again, Mr. Wright. How are you?

5 A. Fine. Thank you.

6 Q. Good. Mr. Wright, for the next 30 minutes or so I'm
7 going to talk to you about some of the issues involved in
8 this case. At that time after I conclude, then either Mr.
9 Byck or Ms. Balido will speak to you on behalf of Mr.
10 Murphy. A lot of the questions that I'll ask you today deal
11 with how you feel about a subject, what your opinions are.
12 We do need to hear how you honestly feel.

13 Another thing that I will be asking you throughout
14 the questioning today will be whether you can conform your
15 beliefs to the law in this case.

16 Now, if you're selected as a juror in this case,
17 you'll be required to take another oath. You haven't taken
18 it yet. And that oath will say to render a true verdict
19 according to the law and the evidence in this case. The law
20 will be given to you by Judge Entz. And in that law he'll
21 explain to you what murder is, what robbery is, what a lot of
22 these definitions are. He'll also explain some of the legal
23 rights that Mr. Murphy has. He'll explain how you're to
24 apply that to the facts that you hear in this case.

25 Now, as a juror, you will have the authority to

1 decide what the facts are. You'll listen to the witnesses.
2 You'll decide who you want to believe, who you don't want to
3 believe. You get to decide the facts, but Judge Entz will be
4 the final source for all of the law in this case.

5 Now, as a general rule, are you the type of person
6 who can follow the instructions from the Court here, even if
7 it might disagree with your own personal opinions?

8 A. Yes, I believe I can.

9 Q. See, a lot of people come down here with opinions,
10 and I would expect them to have opinions. Sometimes they
11 have very strong feelings about some of these matters. Maybe
12 they have a perception of the criminal justice system maybe
13 from observing it, reading about cases or whatnot.

14 Now, we as attorneys know what the rules are. I'm
15 fully prepared to abide by all the rules. I know what I have
16 to do in this case. Let me go into some of these rules with
17 you right off the bat. Okay? Because they are very
18 important rules. These rules insure that Mr. Murphy will get
19 a fair trial. Obviously, there's a lot on the line here. If
20 the State of Texas prevails in this case, they'll come a day
21 where he will be put to death in Huntsville, so obviously
22 it's very important that he be given a fair trial. We want
23 him to get a fair trial. We want 12 fair jurors.

24 The first thing I want to talk to you about is the
25 presumption of innocence. In all criminal cases, every

1 single defendant who comes in here is presumed innocent of
2 the offense. I don't care whether there have been a hundred
3 eyewitnesses, I don't care if it's been on videotape, once a
4 man walks into this courtroom, he's got no burden of doing
5 anything. It's all on the State of Texas. The old saying is
6 those who bring the charges have to do the proving. We have
7 brought the charges. We have the burden of proof in this
8 case. If we fail to meet our burden of proof, that
9 presumption of innocence is so strong that you'd have to say
10 not guilty.

11 Now, in this particular case, without going into
12 specific facts, obviously some things have already happened.
13 Mr. Murphy has been arrested for the offense of capital
14 murder. He's been charged with that offense. He's been
15 indicted by a Dallas County grand jury. The case has been
16 referred to this court. We're a little over halfway through
17 the jury selection, but he's still presumed innocent. That
18 presumption is so strong as he sits here right now, if we
19 started this trial and Judge Entz said State ready and I said
20 yes, and he said present your evidence, and I said I don't
21 want to or I don't want have any evidence, you'd have to say
22 not guilty because again, the burden is on the State of
23 Texas.

24 In this particular case can you assure all of us
25 that you will presume Jedidiah Murphy to be innocent of this

1 offense?

2 A. Yes.

3 Q. Will you make the State of Texas prove its case
4 beyond a reasonable doubt before you find him guilty?

5 A. Yes.

6 Q. Sometimes jurors come down and they say, well, I'd
7 like to hear from both sides before I have to make a decision
8 like this. I think that's only natural, so would I. But you
9 have to understand the legal requirements here. The legal
10 requirements are that I've got to put on the evidence. Mr.
11 Murphy can sit there with his attorneys and literally they
12 can doodle the entire trial. They don't have to say a single
13 word. They have no burden of proof. They will never have a
14 burden of proof in this particular case. That extends to Mr.
15 Murphy testifying or not testifying.

16 Again, I have a lot of jurors who come down and say
17 I would like to hear from the defendant, see what he has to
18 say. I have some jurors who go as far as to say, well, you
19 know, if he doesn't testify, maybe he's hiding something.
20 I've been a defense attorney, too. I've had clients, and
21 I've had to counsel them about testifying or not testifying.
22 Some of my clients would have made great witnesses. Some of
23 them would have made horrible witnesses. Some of them
24 couldn't speak English. Some of them froze up when they
25 started talking, so there are a number of reasons why

1 somebody might not testify in a case like this.

2 What the law is going to say to you is this. If a
3 defendant chooses not to testify for whatever reason, when
4 you go back there to that jury room, you cannot hold that
5 against him in any way. You can't consider it. You can't
6 use his silence and add it to the evidence that I present to
7 push me over the burden of proof in this case.

8 In this case would you be able to do that?

9 A. I believe so.

10 Q. Okay. And again, it may be natural to think if I
11 were in that position, you'd do something different perhaps,
12 but in this case if he doesn't testify, you'll be duty bound
13 to go back there and just not consider it. Look to the
14 evidence that I presented because again, I've got the burden
15 of proof in this type of case. And when it comes to the
16 burden of proof, what I have to prove is on that indictment
17 in front of you. There's several things that I have to show
18 to you beyond a reasonable doubt.

19 Now, I've got to show you, for instance, in this
20 case that it occurred in Dallas County, Texas, on or about a
21 certain date, that Mr. Murphy is the person who intentionally
22 took the life of Bertie Cunningham, that he killed Ms.
23 Cunningham by shooting her or drowning her. That did he that
24 during the course of either robbing her or kidnapping her. I
25 have to show all of those things. If I fail to show any of

1 those essential elements, even though I may hit nine out of
2 10, that's not good enough. And this particular case, and I
3 understand this going in, I've got to hit 10 out of 10 or I
4 lose. I expect to lose if I don't get all 10.

5 Let me illustrate how important that is. Let's say
6 in a case like this, and I'm going to make these -- these are
7 going to be examples that I think you're going to see are
8 very extreme. And they'll be somewhat difficult maybe. But
9 they do illustrate how important these rights are.

10 I'll use myself for this example. Let's say that I
11 go out and I'm a fire bug and I don't like children. And I
12 go out to a child care center and I fire bomb it and I kill a
13 hundred children inside. I'm brought to trial. There is no
14 doubt after you hear the evidence that I did it, that I
15 intended to do it, I'm as guilty of capital murder as guilty
16 can be. There is no doubt about the fact that they have the
17 right person. Maybe even I've indicated I'll do it again.
18 I'm a dangerous individual. And yet let's say for whatever
19 reason, it turns out that child care center was in Kaufman
20 County perhaps, or Denton County, it is not in Dallas County,
21 the State was required to prove that my act occurred in
22 Dallas County. Maybe it was in Dallas County, but maybe the
23 prosecutor never asked the right question. Maybe he's over
24 there sleeping and just forgot to ask a question. Again, you
25 go back to the jury room. Your common sense tells you you're

1 looking at an extremely dangerous person, but you also know
2 that Dallas County has not been proven up. I know from your
3 questionnaire, and this -- I know you indicated sometimes
4 people get off because of technicalities. And that is one
5 way of looking at it. But again, I guess as attorneys, we
6 look at it as that's an essential element to prove. It's
7 just as important as proving that I did it in that case.
8 What the law is going to require you to do may not be easy
9 here. And it may come in conflict with a lot of feelings and
10 emotions that you have. And you may say to yourself that's
11 an extremely dangerous person. But the Judge would instruct
12 you in that case, if there is a reasonable doubt about
13 whether that happened in Dallas County, you have to say not
14 guilty, notwithstanding everything else that you've heard in
15 that case. And this is I guess where the rubber meets the
16 road. Some people say that might be the hardest thing I've
17 ever got to do in my life, but if I'm going to take an oath
18 to be true to the law and the evidence then I'll do that.
19 Other people say I don't think I have the discipline
20 necessary to do that. I don't think that my conscience could
21 live with that. And I don't care what the law says, I don't
22 care what the rules say, I'm not going to obey them. I'm not
23 going to let the man go free. You can see the dilemma there?

24 A. Uh-huh.

25 Q. So my question to you very simply is, if you're in

1 that situation -- I'll make it even tougher for you if it's
2 not tough enough already. All other options --

3 THE COURT: How tough do you want him to make
4 it?

5 MR. DAVIS: This would be my last --

6 THE COURT: Does that top it off so far?

7 VENIREPERSON: That's pretty tough.

8 Q. (By Mr. Davis) My last addition to that will be you
9 go back there and the other 11 people are saying, okay, Mr.
10 Wright, we're not going to let him go. We're not about to go
11 out here in this community knowing that this guy is walking
12 out of the courthouse. We don't care what the Judge says.
13 We don't care what the document says. Let the next group
14 deal with it. He can only be tried once. And if we say not
15 guilty, that's it. What do you do?

16 A. Well, I mean that's a tough question, obviously.
17 I've always been a firm believer in doing what the right
18 thing is. And the law says that this is what it is, I've
19 always been a believer in that. As much as I would disagree
20 with it or be opposed to it, I feel like I could uphold what
21 the law says.

22 Q. That's important because, you know, this justice
23 system does not work unless people try to do the right thing.

24 A. Of course, I've never been in a position where I've
25 had to make that kind of decision either. And I don't know

1 for sure that I would, but I believe that I would.

2 Q. Okay. Let me just reassure you, of course, these
3 examples I don't expect any of them to occur.

4 A. Sure.

5 Q. I wouldn't expect you to be put in that kind of
6 position. On the same -- on the same vein, sometimes written
7 statements or confessions are taken from defendants down
8 here. And there are rules that apply there before the
9 confession can be considered as evidence. You're probably
10 familiar with Miranda warnings if you watch any of these
11 shows. And, you know, there's several things that the
12 suspects have to be been told. Let's say again in my case, I
13 fire bombed the child care center. There is not an eye
14 witness around when I do it. I get away scot-free. I talk
15 with the police later, and I decided I'll just brag about
16 what I did. I don't care who knows, and I go in there and
17 start talking to a detective, maybe he's been on duty too
18 long. He's just tired. He doesn't remember to give me all
19 of the warnings, he gives me three out of the four necessary
20 warnings but maybe he forgets to tell me that I can have an
21 attorney appointed if I can't afford one. I don't want an
22 attorney. I don't ask for an attorney. But he fails to give
23 me that warning. We come to trial -- that's the only
24 evidence that the State has against me is my written
25 statement. Well, the Judge is going to instruct you there,

1 unless all of those warnings were given, you got to throw
2 that statement out.

3 Let's say the detective very honestly says, I just
4 didn't give him the warning. I don't have a good explanation
5 for it. I just flat forget. He never asked for an attorney,
6 it was never an issue, but in all honestly, I just never did
7 say that to him. Judge Entz would say if it wasn't given,
8 you've got to throw the statement out. Again, that problems
9 is if you through that statement out against me, there's
10 nothing else left. Same situation, very dangerous
11 individual. Maybe I've threatened to do it. And the very
12 first child care center I get to when I walk out of here, I'm
13 going to go for it again and you know that. If it comes down
14 the doing the right thing, we're not doing the right thing
15 there, too.

16 Could you do the right thing there also?

17 A. I believe so.

18 Q. Fair enough. I think that's probably the hardest
19 question I'll ask you this afternoon. Okay? So just relax.
20 Let's talk for a moment about the offense of murder.

21 THE COURT: You can wipe that sweat off your
22 forehead that you've been sweating.

23 Q. (By Mr. Davis) Let's talk about the offense of
24 murder. Because if you'll recall, Judge Entz told you
25 capital murder is always an intentional murder plus something

1 else. An intentional murder by itself, no matter how bad it
2 is, is never a death penalty case. It has to be another
3 aggravating circumstance to go along with it. So if I saw
4 someone sitting over here in this jury box and I just didn't
5 like the color of their hair and I shot them ten times in the
6 head, intending to kill them. As bad as that may be, it's
7 still not a death penalty case.

8 Now, there are all types of intentional murders. I
9 mean, we can sit here and we can talk about any number of
10 circumstances and motivations for taking another human life.
11 Some of them might actually surprise you. You know, it can
12 be as bad as this where I just hate somebody for no reason
13 and that fuels my anger and I kill them. Motivation may be
14 very different. Let's say I've got a teenage daughter and I
15 find out that the neighbor down the street is a crack dealer
16 and he's been supplying her with crack cocaine. He's got her
17 hooks and maybe she's got brain damage -- permanent brain
18 damage as a result of using crack cocaine. I find out about
19 it, and I think to myself there is no way I'm going to let
20 him sell to anyone else. And I very methodically decide to
21 take his life, and I go down there and shoot him. Well, I
22 intended to kill him, but you see, the motivations and
23 thought processes were very different. So there are any
24 number of these situations out there.

25 When we talk about the intentional taking of a life,

1 we're talking about a situation that's not an accident. It's
2 not negligence. It's not self-defense. It's not insanity.
3 It's an intentional act. You know, besides the crimes being
4 different, every defendant is different. I mean, I've
5 tried -- I can't tell you how many murder cases I've tried
6 over the years. I can tell you one thing, every defendant is
7 unique. His background, his character, is all different.
8 You may have an individual who has lived a spotless life.
9 Let's say the situation with the crack dealer. Maybe I've
10 been a deacon in my church, pillar of the community. I'd
11 never think about doing this otherwise, but I've taken a
12 human life. I've committed a capital murder perhaps or a
13 murder. And all the way down to the other end of the scale,
14 maybe you've had an individual who's been in trouble most of
15 his adult life. Maybe even as a juvenile even. He's
16 escalating out of control. Maybe he's been through the
17 criminal justice system, maybe not. So they come in all
18 shades and sizes there.

19 The key again is this, and the reason I'm going
20 through this is if you're a juror on a murder case, to be
21 constitutionally qualified to sit as a juror, you have to
22 have an open mind to the full range of punishment. You have
23 to honestly be able to say to us if you heard a murder case
24 and you thought the right thing to do in that case was to
25 give the maximum, that you could do it. If you thought

1 something less was called for, you would give that also. And
2 if you heard a murder case and you thought that that
3 particular defendant in that particular fact situation called
4 for the minimum of 5 years, you could do that, also.

5 Now, honestly I've had jurors who have sat up there
6 and told me I don't care what facts I hear, I don't care if
7 that defendant has been a Boy Scout, Eagle Scout, and been
8 the best citizen in all of Dallas County, I'm never ever
9 going to give 5 years for an intentional killing, I don't
10 care to hear the facts. Obviously, that person has already
11 prejudged what they're going to do. They're not qualified
12 because you have to have an open mind. But the key is if you
13 heard that case, and it may be a rare case -- you don't even
14 have to be able to sit up there and tell us what fact
15 situation would actually make you think 5 would be the right
16 thing to do, but you have to be able to say I'm open to the
17 idea that a case might come across, a murder case, where 5
18 years would be the right thing to do. And if I saw that case
19 and if I thought 5 was the right thing to do, then that's
20 exactly what I would do because I would think that is the
21 right thing to do today. Could you do that?

22 A. Yes, sir.

23 Q. Mr. Wright, let's switch gears a little bit and talk
24 about these special issues.

25 A. Okay.

1 Q. That's really where the death penalty is different
2 than other felonies cases. Normally, if you find someone
3 guilty, we go to a punishment phase and then the Judge will
4 give you the range of punishment like for murder. And you'd
5 have a verdict form and you'd actually write in the number of
6 years that you thought was the right sentence for that
7 person. But in death if you find someone guilty of capital
8 murder, we go to a punishment phase. The evidence may be
9 different. You may get to hear things about the defendant's
10 background, his character, that are not admissible in the
11 first part of the trial. After you've heard that, you're
12 faced with Special Issue Number 1.

13 Now, in the past again -- let me just tell where you
14 some people have a problem, see if you fall into this
15 category. Some people would say if I find an individual has
16 intentionally taken another life during the course of a
17 robbery or kidnapping, that by itself without any other
18 evidence tells me always that the answer to Special Issue
19 Number 1 will be yes and I will automatically say yes
20 regardless of what I hear at the punishment phase.

21 Now again, at the punishment phase both sides have
22 the ability to offer more evidence. If the State has
23 evidence of prior convictions, you know, we have an
24 opportunity at that time to tell you. If the defense wishes
25 to offer testimony that the man has no criminal history or

1 perhaps character witnesses who come down to talk about his
2 past, whatever it may be, they're entitled to do that, too.

3 The question then simply is if you find someone
4 guilty of capital murder, are you going to automatically
5 answer Special Issue Number 1 yes? Or will you wait for all
6 the evidence and will you base your answer to Number 1 on all
7 of the evidence that you hear?

8 A. I think I would base it on the evidence.

9 Q. And again, the State of Texas has the burden of
10 proof here. If we prove to you beyond a reasonable doubt
11 through all of the evidence that we present that it should be
12 answered yes, you answer it yes. If we fail to meet our
13 burden of proof, it's kind of like the presumption of
14 innocence again. It's presumed to be no. If we fail to meet
15 our burden of proof, then you answer it no. And I hear you
16 saying that's exactly what you would want to do is wait for
17 all the evidence hear, and your answer will depend on the
18 evidence that you hear, correct?

19 A. Yes.

20 Q. Let's talk about some of the words up here because
21 even though the questions have been given to us by the
22 legislature, they weren't kind enough to give us legal
23 definitions for a lot of these words. So we depend on jurors
24 to tell us how they look at these things. First of all, the
25 word "probability." Whether there is a probability that the

1 defendant would commit criminal acts of violence.

2 Now, the legislature could have chosen other words
3 for us. They could have said to the State of Texas, we're
4 going to put the bar up so high that the State has to prove
5 that there is an absolute certainty, 100 percent certainty
6 that the defendant would commit criminal acts of violence.
7 Obviously, they didn't do that. They could have made it so
8 low as to say all the State has to prove is that there is
9 a -- the slightest chance or the slightest possibility or a
10 mere possibility that the defendant would commit criminal
11 acts of violence. They did not do that also. And I like to
12 point out to jurors when they said probability, they meant
13 exactly that. Not a possibility. Not a chance.

14 I see that you're an engineer, correct?

15 A. Yes.

16 Q. Okay. I started off as an engineer before I
17 switched majors a long time ago. I know as an engineer we
18 might have looked at things a bit differently
19 mathematically. Probability means something a little bit
20 different here. But when we're talking about this up here, a
21 lot of jurors have told me probability to them, if we're
22 talking about numbers, to be a probability on a scale of zero
23 to a hundred, it has to be at least 51 percent. Anything
24 less than that really is not a probability. It gets down to
25 the point of a possibility. It's kind of like a majority

1 minority. I mean, if it's 51 percent, it's a majority. If
2 it's less than that, it's a minority. Same kind of
3 thinking. A likelihood as opposed to chance or a
4 possibility.

5 How do you look at the word "probability" in the
6 context of Question Number 1?

7 A. Well, I don't think there is -- that you can assign
8 a numeric value to anything in that. It's more of a
9 likelihood or based on past performance or past actions that
10 leads the possibility -- not possibility, but leads evidence
11 that the person would be likely to commit an additional
12 crime.

13 Q. Exactly. Really I think the words that you used
14 "likelihood" or "likely" are very much in line with that.
15 The only reason I use the scale is, can you see anything less
16 than 51 percent would be a possibility?

17 A. I don't know how would you assign a scale --

18 Q. Right.

19 A. -- for that.

20 Q. Well, zero being the very slightest chance ever.
21 100 percent being -- now, you're entitled to think of it as
22 higher than 51 percent. I mean, I've had jurors, some of
23 them say 70 or 80, whatever --

24 A. Well, I would think it would have to be 51 at a
25 minimum --

1 Q. Yes.

2 A. -- if you're trying to do some type of numerical
3 assignment to it.

4 Q. Criminal acts of violence. You see again they could
5 have said we have to prove that this person is going to
6 commit another murder, another capital murder. They could
7 have written that in, but they didn't. They could have gone
8 as low as to say any criminal act will do -- I mean,
9 littering, jaywalking, anything. That's not a criminal act
10 of violence, obviously. Most jurors tell me to be a criminal
11 act of violence, there has to be another individual involved,
12 either they are physically harmed in some way or they're
13 threatened with harm in some fashion.

14 Are you comfortable with that.

15 A. Yes.

16 Q. Finally the word "society." Continuing threat to
17 society. Let me tell you society can mean everyone. It can
18 mean people like you and I who live in the free world. In
19 the context of this question, if you'll remember, the Judge
20 has told you a capital life sentence means at least 40
21 calendar years. Think of it like this. Society for the
22 defendant can be anywhere he may find himself, anyone he may
23 come in contact with.

24 Can you see how that may also include prison?

25 A. Yes.

1 Q. Okay. Now, you're entitled to continue to think of
2 the free world as being part of society. And I like to ask
3 people if they've heard about Connally 7, inmates who escaped
4 and killed the Irving officer. Some of those inmates were
5 actually serving life sentences when they escaped and came up
6 here to Dallas County and killed the police officer.

7 Before we go on to Number 2, do you have any
8 questions, Mr. Wright, about Special Issue Number 1?

9 A. No.

10 Q. Special Issue Number 2, I believe the Judge has
11 reminded you when you get down there, you're really
12 two-thirds of the way to a capital murder death sentence.
13 What -- what really the law is going to ask you to do there
14 is to forget what you've done previously. Agree to take
15 another look at all the evidence, and decide is there
16 something in that evidence, no matter what it may be, no
17 matter where it came from, is there something important
18 enough to you that changes a death sentence to life
19 sentence. That's really the question. What that thing is,
20 is totally personal. There's no list of things we ask you to
21 mark off as being mitigating or aggravating or
22 non-mitigating. That's really your decision to make.

23 It works this way. You get down there, you see
24 something, you decide it is sufficiently mitigating for
25 whatever reason, you answer it yes, the man gets life. If

1 you make that examination and you don't see anything that's
2 sufficiently mitigating, you say no, he gets death. Some
3 jurors, problems that they've had on this question, some
4 jurors have told me, if they think someone is honestly guilty
5 of capital murder, if they think beyond any reasonable doubt
6 that that person will constitute a continuing threat to
7 society, they don't care about what evidence there may be.
8 They're never going to take a chance with that person. They
9 will always answer that question no and make sure that guy
10 gets death. They're entitled to think about that, but
11 they're not qualified jurors. Because what the law is going
12 to require you to do there is even if a person is incredibly
13 dangerous, maybe the most dangerous person you've encountered
14 in your life, you need to look at the evidence again. And
15 there can be any number of things there. Maybe there's --
16 maybe there's no doubt that he's guilty, maybe you think he's
17 just as dangerous as he can be, but maybe there is that one
18 issue that you didn't really think about that persuades you
19 now. I think life really is more appropriate.

20 See, the reason we have Special Issue Number 2 is
21 because of a case involving a person by the name of John Paul
22 Penry. John Paul Penry committed a horrible capital murder
23 down in Southeast Texas. A rape/murder, just a horrible set
24 of facts. But in his trial there was an issue about whether
25 he was mentally retarded or not. And before he went to trial

1 the first time, we didn't have Special Issue Number 2. And
2 the court said we want jurors to have a mechanism by which
3 they can consider things like mental retardation. And if
4 they think it's important enough to save his life, then they
5 can do it. I guess you could have somebody who's 40 years of
6 age chronologically, but yet mentally he's functioning at the
7 rate of a 4 or 5-year-old. He's just profoundly retarded.
8 You may look upon him as guilty and very dangerous, but you
9 may decide in your own that you can't justify putting him to
10 death.

11 Do you think you can go through that type of
12 process, even if you thought someone was dangerous?

13 A. I think I could. Of course, obviously, I've never
14 had to make that kind of decision, but I feel like I'm pretty
15 open-minded to -- to things.

16 Q. All right. Let me go through some of the things
17 that other jurors have mentioned to me in the past and kind
18 of get your initial reactions to these things. Sometimes
19 people will talk about alcohol or drug use as possibly
20 mitigating. Kind of on the extremes here I've had some
21 people say that they think it's a disease process and they
22 think it's as mitigating as it can be. I've had other people
23 tell me that's a conscious decision. It's a personal
24 choice. They don't think of it as mitigating. I've had
25 other people come down the middle and say I want to hear the

1 facts about it. Maybe they can see a distinction between
2 maybe a young person who's not used to using, maybe doesn't
3 know how the substances would affect him, versus someone who
4 is a little older, who has a lot of experience, and maybe
5 knows full well how those things affect him.

6 Any feelings about that?

7 A. Yeah. I've always been a strong believer in
8 personal responsibility, and I believe if you make the
9 decision to use those kinds of substances, you could and
10 should be held responsible for your actions.

11 Q. All right. Mental illness. Some people mention
12 that. Again, it kind of goes back with mental retardation.
13 We're talking about a situation where -- oh, you know, person
14 knows right from wrong. He's not legally insane. But again,
15 maybe he is so profoundly retarded that you just can't
16 justify a death sentence. Maybe he's had some severe mental
17 illness that maybe has affected him.

18 Are you at least willing to listen to that type of
19 evidence, and then you can make your own judgment. Maybe it
20 just doesn't rise to the level that you want it to rise to,
21 or maybe it's something that you'd really want to take into
22 account.

23 Could you do that?

24 A. I'm willing to listen.

25 Q. Okay. And I know that you've said in the past

1 sometimes, you know -- sometimes people use mental issues as
2 a crutch. Okay. Again, this goes back to your duty as a
3 juror, and that's to listen to the evidence. Because if that
4 kind of issue is raised, you've got to listen to the
5 testimony, you've got to decide whether you believe it or
6 not. It may be a situation where you listen to the testimony
7 and you just don't believe that the evidence is there to
8 support it. Or maybe there's enough evidence that you agree
9 that maybe there is an issue of mental illness. Then you get
10 to decide just how important is that in relationship to
11 Special Issue Number 2.

12 Let's go through your questionnaire here just a
13 little bit. You know, as I go through here, you know, it's
14 obvious to me that you are in favor of the death penalty. I
15 can see that you are a big believer in personal
16 accountability here. The real question that it comes down to
17 again because everybody is entitled to opinions -- I think it
18 would be pretty strange if we had somebody who didn't have an
19 opinion. I would be wondering, you know, where have they
20 been spending their life. But the real key is can you be
21 fair to both sides?

22 A. I believe so.

23 Q. And, you know, I'll just ask if right now -- I mean,
24 if you were sitting over there next to Mr. Murphy and having
25 to defend him for instance, you know, would you be confident

1 about your own ability to be fair and listen to the testimony
2 and give him his legal protections that he's entitled to?

3 A. That's really hard to answer. I really don't -- I
4 don't know.

5 Q. It really comes down to this and following the law,
6 because the Judge is going to tell you what those protections
7 are. He'll tell you what you need to do. And it gets down
8 to this, making the State prove its case on guilt/innocence,
9 affording him his presumption of innocence, affording him his
10 right to remain silent under the law.

11 Do you think you can do that?

12 A. Yes.

13 Q. I guess the other extreme, too, would be if he
14 testifies. What I tell jurors there is this, he's not
15 presumed to be a truth teller, but I would expect a jury to
16 listen to him like they would any other witness and judge his
17 testimony accordingly. You judge it. Does it make any sense
18 to you? Does it square with the other evidence in this
19 case?

20 Do you feel like you can do that, or if he gets on
21 the witness stand you're just going to automatically decide
22 he's not telling you the truth, or are you willing to listen?

23 A. I'm willing to listen to both sides.

24 Q. Last question for you is this. Again, I've told you
25 I cannot go into specific facts here, but I am entitled to

1 ask you one question. The reason I'm going to ask you this
2 question is very simple. We want jurors who can be fair and
3 impartial, who can really base their verdict on the evidence
4 that they hear. It would be wrong for jurors to come down
5 here and base their verdict simply on sympathy or emotion for
6 either side. Some of these issues that you're going to hear
7 about are going to be very graphic. They're going to be very
8 difficult. By those allegations, you can tell it's not going
9 to be an easy case to listen to. I am entitled to ask you
10 this. If it turned out in this case that Ms. Bertie
11 Cunningham, the victim, if she was an 80-year-old woman at
12 the time of her death, could you still be fair and impartial
13 to Mr. Murphy?

14 Now, before you answer, you would be free to take
15 that into account on punishment because I've had a lot of
16 jurors tell me the age of the victim, the helplessness, the
17 innocence of the victim, I'm going to think about that, and
18 that's all -- that's all proper. I guess it really plays in
19 more to guilt/innocence here.

20 A. I don't think the age should have any bearing on it
21 at all.

22 Q. Simply going to look at the facts presented, and if
23 they're there to prove his guilt, find him guilty; and if
24 they're not there, you can find him not guilty.

25 A. Correct.

1 Q. Mr. Wright, do you have any questions for me?

2 A. No, I don't think so.

3 Q. I appreciate your time, sir. I appreciate your
4 answers this afternoon.

5 THE COURT: Mr. Wright, do you need a rest
6 room break or a stretch break?

7 VENIREPERSON: No, I'm fine.

8 THE COURT: Or are you ready to continue
9 with --

10 VENIREPERSON: Yes.

11 THE COURT: -- Mr. Byck?

12 Mr. Byck.

13 MR. BYCK: Thank you, Your Honor. May it
14 please the Court.

15 Cross-Examination

16 By Mr. Byck:

17 Q. Mr. Wright, again, my name is Mike Byck. And
18 together with Ms. Balido who is absent from the courtroom
19 right now and Ms. Jane Little who's been absent for a while,
20 we represent Mr. Murphy in this trial for his very life.
21 I've appreciated the consideration and the attention that you
22 paid to Mr. Davis's questions. I'd ask that you do the same
23 for me. Because as Mr. Davis said, this is not a citizenship
24 examination. We're not reporting out your good grades to any
25 clubs or any organizations, whether you answer questions

1 right or wrong because there are no right or wrong answers to
2 these questions, but it is important that you tell us how you
3 feel.

4 Mr. Davis started at the beginning and worked to the
5 end. I'm going to start at the end and work back toward the
6 beginning. On page 13 we asked you if you wanted to serve as
7 a juror in this case and you said, not particularly. I'm
8 concerned that it will interfere with my business. You have
9 heard the Court's projected schedule, that we are going to
10 start the day after Memorial Day. The trial will go probably
11 between five to eight days. That does not include the amount
12 of time that the jury might or might not deliberate.

13 Is there anything going on in your business in that
14 period of time that is so important to you or would be so
15 distracting to you that you could not fully concentrate your
16 attention and your energy on this case?

17 A. Well, I don't think so. I mean, our business right
18 now though is incredibly busy. We've got a tremendous amount
19 of work going on, and it's just kind of very hectic around
20 the office.

21 THE COURT: No layoffs in your business?

22 VENIREPERSON: Not yet. May be as -- if these
23 other layoffs continue. We're in the development oriented
24 business and land stuff and -- it's still going very well
25 right now.

1 Q. (By Mr. Byck) You know your business best. I know
2 your business not at all.

3 A. Uh-huh.

4 Q. What if --

5 A. Let me ask one question, when you say this is five
6 to eight days, is this from 8 o'clock in the morning to 5
7 o'clock in the night?

8 Q. Yes.

9 A. Or is it until 9 o'clock at night or --

10 THE COURT: No.

11 A. Okay.

12 THE COURT: No, because I have a court
13 reporter. I have other staff. Yeah, we'll probably be from
14 9:00, maybe 9:30 until 4:00, 4:30, depending upon the flow of
15 evidence.

16 A. I mean, I don't know what will happen with my
17 business in that time frame. That's a month off or
18 approximately. And I just don't know, to be honest with
19 you. I mean, I --

20 Q. (By Mr. Byck) Well, you know your business best.

21 A. I mean, I don't -- I don't -- I would like to think
22 that it wouldn't affect my judgment or my outlook on things
23 because I'm sitting here. It would be a hardship to me, but
24 I don't think it will --

25 Q. I appreciate that. And, sir, let me tell you that I

1 will submit to you that most people would be good jurors in
2 most cases. I will also submit to you that no juror would be
3 a good juror in all cases for all kinds of reasons. For the
4 immediate point in time that they're in, their background,
5 their particular outlook on things. They may not be a good
6 juror. You don't have to be on this jury. And this is not a
7 question that I have a decision over or Mr. Davis has a
8 decision over. It's a question you have a decision over. If
9 you want to say, listen, Mr. Byck, I'm really, really, really
10 busy now and I've got -- I've got people to supervise and
11 I've got things going on that I need to concentrate on, I
12 want to come down, I want to do my duty as a citizen.
13 Believe me, sir, we already know that because you're here.
14 If you didn't feel that way, you wouldn't be here and we
15 wouldn't do anything about it. But you're here, so, you
16 know, you've convinced us that you're sincere. But if you
17 are at a point in your business or, you know -- likewise, I'm
18 going to ask you at the end of our conversation is there
19 anything else that might interfere, things that I would never
20 know about, one of your children is ill. I have no idea what
21 it would be. But you know your business. You know the point
22 in time that you're at.

23 Can you tell me that you will promise me, because
24 that's what I'm going to ask for, sir, not I believe I could,
25 because I've got a young man over here whose life is in my

1 hands and I've got to know and I've got to know fate certain
2 are you going to be able to devote a hundred percent of your
3 attention to the trial of this case if you were chosen to sit
4 as a juror, or would you have to say, Mike, some other case
5 some other time?

6 A. No. If I'm chosen, I will devote my time, whatever
7 time is necessary to serve on this case.

8 Q. And you don't feel that there's any problems out
9 there that --

10 A. No, I mean --

11 Q. -- that would distract you?

12 A. -- just from a purely personal reason, it would be a
13 hardship on me, but I believe in doing my -- fulfilling my
14 responsibilities to serve and I will do the best of my
15 ability to -- to render a verdict or whatever is necessary.

16 Q. Very good. Very good.

17 Let's talk a little bit about technicalities. On
18 page 3 we asked you about eight statements. And out of the
19 eight statements, three of the eight you were concerned with
20 technicalities. We asked you the biggest problem with the
21 criminal justice system is, that criminals are released due
22 to technicalities and they don't serve the appropriate length
23 of sentence. We'll talk about that later. We also asked you
24 about prosecutors. You said they are limited by
25 technicalities. And asked about criminal defense attorneys,

1 and you say they have been successful in guilty people being
2 released.

3 THE REPORTER: I'm sorry. Repeat that.

4 Q. (By Mr. Byck) We asked you about criminal defense
5 attorneys, and you said, quote, they have been successfully
6 in guilty people being released, which I imagine is another
7 problem with technicalities.

8 You're obviously very sincere about this. Many,
9 many people are. Many people don't really understand that
10 the law, while trying to be reasonable, is not always
11 logical. And there are some technicalities that particularly
12 gall some people. And due to these technicalities, people
13 are -- have been released, have escaped from the justice that
14 they might or might not been due for their offense.

15 What are your feelings about these technicalities?
16 How do you feel about them?

17 A. Well, I mean, I'm opposed -- and I say not opposed
18 to them, but it's disappointing to me that there are people
19 who go free because of some technicality. People are not
20 made to pay the price, so to speak. I think Mr. Davis's
21 example is an extreme example of one where I feel like I
22 could say, yes, they are free. As much as I dislike the
23 verdict, I believe in the law. I believe in upholding the
24 law. And unfortunately, sometimes that's -- can be very
25 distasteful.

1 Q. So I'm going to run Mr. Davis's scenario by you
2 again. I'm going to put a little bit of a different twist on
3 it. And let's see if we come to the same result. Okay?

4 I, like Mr. Davis, am an arsonist. I like to burn
5 down elementary schools. That's my forte. So I go out and I
6 find myself an elementary school. I cook up my special
7 cocktail of school burning material. And I go by there one
8 night and I spread it around. I put a timer in there and the
9 next day the kids come in and the school goes up in flames.
10 The fire department immediately responds and the firemen
11 along with bringing hooks, ladders, and water hoses, also
12 bring a videotape because I don't know if you know this, but
13 at the scene of major fires there will be one fireman
14 designated to videotape everybody around just to make sure if
15 they've had five fires in the last year --

16 A. Uh-huh.

17 Q. -- five majors, the same face doesn't show up on all
18 five. Well, sure enough, my face shows up as being from
19 another fire. So they try to put my face to a name and
20 they're having a little bit of problems with it because I
21 don't have a real bad record. So there's is another fire and
22 more kids are lost. And this time the fireman recognizes me
23 and this time they come over and they say can we talk to you
24 and I say you certainly may. And then the police comes over
25 and they say will you come with us and I say I certainly

1 will. And they take me downtown. And as you were told about
2 the Miranda warnings, there are four Miranda warnings. You
3 have the right to remain silent; if you do not chose to
4 remain silent, anything you say can be used against you.
5 That's Number 1. You have the right to have an attorney.
6 That's Number 2. Present during the questioning. Number 3
7 is if you are too poor to afford an attorney, we'll appoint
8 one for you during this questioning. And the fourth one is
9 you have the right to terminate the interview.

10 Well, I go down to the police station and the police
11 are talking to me and they say do you want an attorney. I
12 say, no. They say, if you're too poor -- and I say I'm not
13 too poor. I've got plenty of money in my back pocket. They
14 say, well, you know, whatever. You want to talk to us. And
15 I say, oh, yes, let me tell you what a good arsonist I am.
16 And I proceed to tell them not only about the places that
17 I've burned by my secret chemicals. Now, they call the lab,
18 the fire lab, and very efficient group of people -- believe
19 me, you give them ashes and they can tell you what burned the
20 ashes. And they come back and they say there are three
21 different things in here, the same exact things -- the same
22 exact proportions that I have in my statement. Only the
23 burner would know that.

24 At the trial, if you were on the jury, you'd learn
25 some other things about me. Not only about the confessions

1 and the taking of the confession, you would also learn from
2 inmates upstairs that I've been setting fires upstairs, too.
3 You'd also learn from some other inmates that I show a very
4 peculiar interest in the schools in their neighborhoods, want
5 to know if they're brick or wood, want to know if they've
6 been recently painted, whether they're well kept up, and
7 things like that. The Judge will tell you in his
8 instructions that you have to believe beyond a reasonable
9 doubt that all four of those warnings were given for that
10 confession to be usable. Otherwise, you've got to disregard
11 it. And just like Mr. Davis said, there is no other
12 evidence. That's it, just my statement. And you go back
13 into the jury room and you say, listen, we got to follow the
14 law, guys. The law says that all four have to be given. And
15 the jury foreman, who happened to be you, says, you know, Mr.
16 Wright, you're right, that's correct. You know, they all do
17 have to be given. But there is one problem. This guy out
18 here is dangerous, number one; and, number two, he never even
19 asked to terminate the interview. We're not talking about a
20 confession where they beat it out of him. Nobody touched me.
21 We're not talking about a confession where they tricked me.
22 Nobody tricked me. We're not talking about a confession
23 where I didn't know that I didn't have a right to have an
24 attorney. They tricked me. Or even if I did, I was too poor
25 to afford one and they didn't tell me I could still have one.

1 The least one of those rights is the right to terminate that
2 interview, and I never showed any signs of wanting to
3 terminate the interview because I was real proud of all those
4 kids I had killed and all those schools that I had burned.
5 And you know very well that if you don't use the confession,
6 you got to find me not guilty. And if you find me not
7 guilty, I can never be charged for that offense or those
8 deaths again. And the other 11 members of your jury panel
9 say very frankly, Mr. Wright, we respect your upholding of
10 the law, but we are not letting that miserable arsonist loose
11 because my kids are out there and your kids are out there and
12 he's going to kill some more. And it's just that simple.
13 And we've all thought about it. We all heard the same
14 evidence you did. And the Judge said you have to believe all
15 four and we believe three, and three out of the four is good
16 enough to get that arsonist off the street.

17 What do you do?

18 A. Well, since I'm only one of 12, I would express my
19 opinions.

20 Q. Okay. It's voting time. How do you vote?

21 A. If I believed that one of the premises was not met
22 under your scenario, I would have to vote not guilty.

23 Q. And you would vote not guilty?

24 A. Yes.

25 Q. Under those circumstances --

1 A. As much as I would disagree with it, I would,
2 because I believe the law should be upheld.

3 Q. Mr. Wright, the starting point of every criminal
4 trial in the State of Texas, as well as the United States, is
5 that an individual is presumed to be innocent. That
6 presumption is nothing I can, you know, cross-examine you
7 about or open one of your veins and get some blood out and
8 show that, yes, you truly believe in that presumption versus
9 you don't truly believe in that presumption. However, I am
10 troubled very frankly by your responses to the questions
11 we've asked you on page 4.

12 One of the questions is if someone is accused of
13 capital murder, he should have to prove his innocence. And
14 you said you were uncertain about that. We asked you further
15 if a person is brought to trial on murder charges, that
16 person is probably guilty. And you agreed with that
17 statement.

18 Now, you know, very frankly a lot of people feel
19 where there's smoke there's fire. You know, if I'm brought
20 in on a traffic ticket or a misdemeanor, I don't know
21 whether, you know, the guy ran the stop line or the stop
22 sign, or I don't know, you know, whether he was drinking
23 after hours or had too many drinks he was trying the car, but
24 when it comes down to a murder prosecution, that's something
25 else. Because I was up here with 59 other jurors. I heard

1 the Judge say we've been doing for six weeks. I heard the
2 State say that, you know, we can prove you this and prove you
3 that and prove other things. And that this may be a
4 different situation where -- if it's gone this far, where if
5 they're in the sixth or seventh week of their jury selection,
6 that maybe there is really smoke where there's fire. Maybe
7 the guy did do something.

8 How do you feel?

9 A. Well, I don't think anybody can come here with a
10 total blank mind. I think that if we're to this point,
11 there's always going to be a -- I don't want to say doubt,
12 but there's got to be a smidgen of evidence or something that
13 we would have gotten to this point. And I think any person,
14 myself included, is going to say in the back of their mind
15 that where there is smoke there may be a fire.

16 Q. And you think it's possible all the jury selection,
17 everything that you've heard about before you, that my client
18 may be guilty?

19 A. Well, I would think if we're at this point there is
20 some presumption that there is enough evidence to stand
21 trial. And I don't think anybody can say that they are going
22 to come in here with a totally absolute blank mind that there
23 is at least not one shred of feeling that the defendant may
24 be guilty.

25 Q. Well, I have two responses to that. Number one, I'm

1 not accusing you of being prejudiced or a bigot, and, number
2 two, I'm not interested in what anybody else thinks. I'm
3 only interested in what you think. And if you think where
4 there's smoke there's fire, just tell me.

5 A. I believe that, yes, where there's smoke there's
6 fire. That is my first inclination.

7 Q. All right. And you feel that there may be some
8 evidence that has caused this to go as far as it has?

9 A. Yes.

10 (Discussion between counsel.)

11 Q. (By Mr. Byck) Let me ask you, sir, the presumption
12 of innocence is fundamental in this country. It's where
13 everybody gets to start from.

14 A. Yes.

15 Q. If I were sitting in this chair, if you were charged
16 with this offense and the other Mr. Wright was up on the
17 witness stand and he was asked, do you presume my client to
18 be innocent, how would that other Mr. Wright answer?

19 A. Well, I think that I'm open -- let me go back and
20 re-answer this a little differently. I may have a
21 presumption of guilt. And if I was sitting -- if I were
22 sitting in the other chair and things were reversed, I would
23 hope that the person up here would admit that they are
24 willing to listen to the testimony, they're willing to make a
25 decision on the facts in the case, regardless of what their

1 perception is before the trial starts.

2 Q. Okay. See, I appreciate that. And believe me, when
3 I first said, you know, I'm not accusing you of being
4 prejudiced, that's exactly what I meant. There is no doubt
5 in my mind that you will listen to the evidence. But my
6 problem is where do you start out from?

7 A. I mean, I know nothing about the case or anything,
8 so I --

9 Q. I understand that. Do you start off thinking --

10 A. I have no starting point other than -- than an
11 indictment and we're at this point.

12 Q. All right. You understand the indictment is no
13 evidence of guilt?

14 A. That's correct. I understand.

15 Q. And if you were asked to vote right now --

16 A. I couldn't vote because there's -- I don't know
17 anything.

18 Q. You couldn't vote not guilty?

19 A. Well, if you go on the premise that they're innocent
20 until proven guilty, I'd have to vote not guilty because
21 nothing has been proven.

22 Q. Okay. And you do go on that premise?

23 A. Yes.

24 Q. Okay. And you can tell the Judge and tell me with
25 clear conscience, pure heart, that, yes, I presume your

1 client to be innocent? No reservations, not unless he shows
2 me something, unless he does this --

3 A. I can presume him to be innocent until I hear the
4 evidence.

5 Q. Okay. And you do presume him to be innocent?

6 A. I know nothing else other than that he's innocent.

7 Q. All right. And then you do think if a person is
8 brought to trial on murder charges, that person is probably
9 guilty. You don't agree with that statement any longer?

10 A. Well, I mean -- there's matters of presumption.
11 Now, I'm not saying that I presume that he's guilty. I
12 presume that there's something gone on, obviously, because we
13 wouldn't be here for a trial.

14 Q. Okay. And that's --

15 THE COURT: Something other than he just -- a
16 person by the name of Jedidiah Isaac Murphy happened to get
17 snatched off the street --

18 VENIREPERSON: And thrown in here.

19 THE COURT: -- and thrown into this chair
20 without anything happening?

21 VENIREPERSON: Right.

22 Q. (By Mr. Byck) Something more than that, you presume
23 something more than that?

24 A. Yes.

25 Q. You were an expert witness?

1 A. Yes, actually it was a dispute on some drainage
2 issues on two construction projects. We were the engineer on
3 it. I was not a true expert witness. I guess I was just
4 called as part of the case to give my explanation of what
5 happened.

6 Q. And what was -- what was your resulting feeling from
7 that experience?

8 A. It was interesting. Back to the deal about
9 technicalities, most of my testimony -- all of my testimony
10 was disallowed because of -- I believe the term was
11 settlement and compromise, that when we went to the -- we had
12 a meeting at the job site and the attorneys were there for
13 the two feuding landowners. And because the attorneys were
14 there and they were discussing the case, anything that I said
15 after the fact was part of the settlement and compromise
16 discussions and therefore was in admissible.

17 Q. Kind of frustrating?

18 THE COURT: Darn civil technicalities.

19 THE WITNESS: Oh, it was very frustrating.
20 Waste of two to three days time.

21 Q. (By Mr. Byck) I'm sure it would be.

22 Finally, sir, I just have a couple of more minutes.

23 MR. BYCK: Do I have anymore time at all?

24 THE COURT: You do.

25 MS. BALIDO: Seven minutes.

1 Q. (By Mr. Byck) I have a couple of more minutes. Let
2 me ask, you do you understand that every capital murder is an
3 intentional murder plus the underlying offense or the status
4 involved, whether you get paid or it's a jail guard or a
5 child or something like that. Okay. You understand that the
6 word "intentional" and you understand that every word in that
7 indictment will be completely defined for you by the Court.
8 The Court will tell you that the word "intentional" means
9 when it is an individual's conscious objective or desire to
10 both engage in the conduct and cause the result. And let me
11 show you how high a standard this is. There are, of course,
12 all kinds of homicides. We're not talking about accidents.
13 We're not talking about self-defense. We're not talking
14 where an individual it's legally insane, doesn't know the
15 difference between right and wrong. Those are all defenses
16 to a crime where if proven, the individual would never be
17 found guilty.

18 We're talking about an unjustifiable, unexcusable
19 taking of a human life and it has to rise to this specific
20 intent. There are basically two kinds of murders. There is
21 a knowing murder, and there is an intentional murder. A
22 knowing murder is where an individual does something
23 dangerous to human life and he really should have known or
24 foreseen the consequences. Five people are walking down the
25 street. I don't like one of them. I pull out a gun and fire

1 at the five people. Another person, not the one that I
2 intended to shoot, but somebody else falls over and dies.
3 That's a knowing murder. That is not enough for a capital
4 murder conviction.

5 A capital murder has to be the individual's specific
6 intent to both engage in the conduct, bring the gun, load the
7 gun, aim the gun, cock the gun, and cause the result. When
8 the gun goes off, I don't want to scare anybody. I don't
9 want to wound anybody. I want them dead, and they die.
10 That's an intentional offense.

11 Having found an individual guilty of an intentional
12 murder plus an underlying offense, theft, robbery, rape,
13 whatever, kidnapping, whatever it happens to be, when you're
14 called upon to answer Special Issue Number 1, whether there
15 is a probability that the defendant would commit criminal
16 acts of violence that would constitute a continuing threat to
17 society, how would you define that probability?

18 A. Well, you haven't presented any other evidence that
19 shows the likelihood of other crimes occurring.

20 Q. Well, maybe people would say anybody who would do
21 something like that, that's an automatic likelihood. You
22 know, if that dog bit me once, he's going to bite again.

23 A. Well, that's not necessarily true.

24 Q. No, I'm not saying that it is. But how would you
25 define probability in the context of Special Issue Number 1?

1 You've talked about likelihood. Well, I submit to you that
2 there is a likelihood of all kinds of things happening, some
3 of which are distinctly improbable. You know, this rather
4 painful interview could be terminated by an asteroid hitting
5 us right now. It's possible. There may be a likelihood of
6 it somewhere .00, you know, 3 feet down the line to the left,
7 but it's not probable. That's not probable, sir. And
8 what -- what concerns me is that after finding an individual
9 guilty with all these defined words, that they look at
10 Special Issue Number 1 and they say, whether there is a
11 probability. Well, that means a chance the defendant would
12 commit criminal acts of violence. You've agreed that
13 criminal acts of violence involve people, right? So it just
14 doesn't involve any criminal acts. That would constitute a
15 continuing threat to society. And some people would say,
16 listen, I found him guilty of an intentional murder while
17 he's doing something else. Is it probable that he's going to
18 do something more? Yes, it is. Or, no, it's not. Depending
19 on how they feel about the particular murder.

20 What I need to know is your definition of
21 probability.

22 A. I don't have a definition of probability at this
23 point. I think every case and every circumstance is unique
24 and has to be evaluated on its own.

25 Q. Well, it --

1 A. I mean, if he had a long history of prior crimes and
2 this was just the culmination of a long history, obviously
3 that's a high probability that he will continue to do those.
4 If he has no prior history -- you just have to look at the
5 whole circumstance of situations to make. And I don't
6 know -- I just -- I can't give a straight answer because
7 you're not in the circumstance or not know all the
8 circumstances or --

9 Q. Okay.

10 A. All right.

11 Q. You can't give a numerical answer, and I understand
12 that. Would you at least agree with me that if you were
13 called upon to sit on this jury, that you would define
14 probability as, quote, more likely than not to happen?

15 A. Yes.

16 Q. Okay. Fair enough.

17 Last chance, anything you can think of, moral,
18 social, political, economic, family, personal, whatever,
19 anything you can think of that would make you a less than
20 fair and impartial juror in this case?

21 A. I can't think of anything right now.

22 Q. Thank you, sir.

23 MR. BYCK: Pass the venireman.

24 THE COURT: Ms. Madore, would you excuse Mr.
25 Wright momentarily?

1 Mr. Wright, as soon as the attorneys confer with
2 their respective co-counsels, they will inform me whether
3 they wish you to remain under consideration. The buck stops
4 with me. I make the determination. If you'd excuse yourself
5 with the bailiff momentarily.

6 (State no challenge for cause - Mr. Wright)

7 MR. DAVIS: The State has no challenge for
8 cause.

9 (Defense challenge for cause - Mr. Wright)

10 MS. BALIDO: Judge, the defense would submit
11 the juror for cause based on his answers that were gone over
12 on the questionnaire regarding the presumption of innocence
13 and the technicalities and those sorts of things. And in
14 addition to his answers that he gave on the stand, we believe
15 he cannot presume this defendant innocent and that his -- the
16 difference between his answers on his questionnaire and his
17 answers on the stand establishes him as a vacillating juror
18 answering different questioned -- the same question different
19 ways. We would submit that he's not qualified to sit on the
20 jury, and we do so under the relevant Code of Criminal
21 Procedures provisions on capital murder jury selection, the
22 4th -- I mean, excuse me, the 5th, 6th, 8th, and 14th
23 Amendments of the United States Constitution and Article 1,
24 Section 10, 13, and 19 of the Texas Constitution.

25 (Challenge for Cause Denied)

1 THE COURT: Defense challenge for cause is
2 denied.

3 (Venireperson returned to courtroom.)

4 (Robert Wright Prospective Juror No. 28)

5 THE COURT: Mr. Wright, you remain under
6 consideration by the Court as a prospective juror on this
7 matter.

8 Ms. Daily has just come in the courtroom. She will
9 be before you leave, be confirming home and work phone
10 numbers. If they should change before this process has been
11 ultimately completed, if you would be kind enough to contact
12 her and bring her up to date with a current telephone, either
13 work or home.

14 For the benefit of the attorneys, also with your
15 permission, I'm going to ask if you'd allow Mr. Rees, the
16 bailiff, to take a Polaroid picture of you.

17 VENIREPERSON: Okay.

18 THE COURT: We're working our way up to 48.
19 And then with the peremptory challenges will be conducted.
20 And we talk to an awful, awful lot of people, and sometimes
21 it starts to get a little blurry with regard to information,
22 questionnaires, and notes. May we have your permission to do
23 that?

24 VENIREPERSON: Sure.

25 THE COURT: It will be destroyed just as soon

1 as that process has been completed, won't even be made a part
2 of the trial record.

3 Also, avoid the temptation of contacting the Dallas
4 Morning News with regard to back issues that covered this
5 incident as a news story.

6 VENIREPERSON: Okay.

7 THE COURT: Be back in touch with you.

8 VENIREPERSON: Can I ask a question?

9 THE COURT: Sure.

10 VENIREPERSON: What's the next step?

11 THE COURT: The next step is you'll get a
12 couple from Ms. Daily in the next couple of weeks as to where
13 we are in the process. If at any time you have a question,
14 give her a call.

15 VENIREPERSON: Okay.

16 THE COURT: She will let you know when you are
17 on or not on -- make the final cut of the 12.

18 VENIREPERSON: Okay.

19 THE COURT: For the benefit of the reporter,
20 let's take about a ten-minute break.

21 (Recess of proceedings.)

22 THE COURT: Ms. Lentz, good afternoon. You've
23 been very patient waiting on us. We appreciate that, and we
24 will proceed forthwith.

25 Ask you to raise your right hand and again be sworn

1 in.

2 (Venireperson additionally sworn.)

3 THE COURT: Thank you, Ms. Lentz.

4 Allow me, if I may, at the outset to reintroduce the
5 individuals whom we see seated at the counsel table.

6 Only one of the two prosecutors presently is in the
7 courtroom. We have on behalf of the State of Texas, the
8 Chief Prosecutor assigned to this the 194th District Court,
9 the Honorable Mary Miller.

10 MS. MILLER: Good afternoon.

11 VENIREPERSON: Hello.

12 THE COURT: Ms. Lentz, I anticipate and will
13 be a bit surprised if Ms. Miller's co-counsel does not return
14 before you complete your interview with us this afternoon.
15 Ms. Miller's co-counsel in this case is a gentleman by the
16 name of Greg Davis.

17 Moving on though to the next table, we begin first
18 with two of the three defense attorneys representing the
19 defendant, beginning first with a former prosecutor in the
20 Dallas District Attorneys Office, now with the Dallas County
21 Public Defenders Office, the Honorable Jennifer Balido.

22 MR. BYCK: How are you?

23 VENIREPERSON: Fine. Thank you.

24 THE COURT: Seated next to Ms. Balido is one
25 of her co-counsel, a board certified criminal law specialist,

1 the Honorable Michael Byck.

2 MR. BYCK: Good afternoon, Ms. Lentz.

3 VENIREPERSON: Hello.

4 THE COURT: Seated next to Mr. Byck, opposite
5 Ms. Balido, is the defendant, the accused, if you will,
6 Jedidiah Isaac Murphy.

7 THE DEFENDANT: Good afternoon.

8 VENIREPERSON: Hello.

9 THE COURT: The third defense attorney, though
10 not present, I wish to introduce my name and in absentia, a
11 board certified criminal law specialist, as is Mr. Byck, her
12 name is Jane Little. Ms. Little is out addressing some
13 pertinent matters with regard to this case outside the
14 courthouse in anticipation of the commencement of the
15 testimonial stage of the trial.

16 Ms. Lentz, if you're prepared to being, we are as
17 well. Are you ready to go?

18 VENIREPERSON: I surely am.

19 THE COURT: Have been waiting a long time,
20 haven't you?

21 We will begin with the State, as is required by law,
22 the Honorable Mary Miller.

23 ANN LENTZ

24 was called as a venireperson by the Court and, after having
25 been first duly sworn, was questioned as follows:

Voir Dire Examination

By Ms. Miller:

Q. Good afternoon, Ms. Lentz. And I just want to reiterate what Judge Entz said, there are no right or wrong answers to any of these questions. We just want to know what your true feelings and opinions are regarding the different areas and principles of law that we're going to be talking about.

I notice when you filled out your questionnaire that you said that you were in favor of the death penalty. And a lot of people agree with that when they originally fill out their questionnaire. They say, you know, in theory or hypothetically in the abstract I have no problem with the death penalty. I believe that it's proper in certain circumstances. And I believe that's what you also said, under certain circumstances I believe it should be used. However you've had a few days to think about it since you filled out the questionnaire. And as you can see, there's nothing abstract about the defendant in this particular case, Jedidiah Isaac Murphy. He is a living, breathing human being. And a lot of people, once they get actually in that chair where you're seated and realize that it's actually not abstract and they're the ones that are actually being called upon to participate, personally participate in a death penalty case, say, hum, you know, in the abstract I believe

1 it's okay, but I couldn't personally participate in it.

2 Other people say, yeah, I don't have any problem
3 participating.

4 How do you feel, Ms. Lentz?

5 A. I don't have any problem participating in it.

6 Q. Okay. And back on page 13 you said that you would
7 not want to serve as a juror in this case because of fear of
8 retaliation. I've been doing this quite a long time, and I
9 haven't had any juror r prospective juror really be
10 retaliated against -- just if that --

11 Can you tell me a little bit about what your fear is
12 or --

13 A. Well, you know, we had to answer those -- we had so
14 many questions.

15 Q. Right.

16 A. And it was difficult to really think through some of
17 them, you know, to the degree that I really thought you
18 should, you know, in order to answer them correctly, but I
19 think my first thought was I watch a lot of TV, and, you
20 know, you see these deals where they come back against some
21 of the jurors and that -- but I have never known anybody
22 personally to be involved.

23 Q. Well, like I said, I've been doing this a long time
24 and I think Judge Entz has been doing it 20 some odd years
25 and I think he'd probably tell you that hasn't seen it happen

1 either, just to allay your fears a little bit.

2 A. Okay.

3 Q. So even though you had originally written that down,
4 you think that you could, if you were selected as a juror on
5 this particular case, just listen to the evidence, base your
6 verdict on the evidence and the law that the Judge gives you?

7 A. Absolutely.

8 Q. Okay. Because in order to be a qualified juror for
9 this -- for this or any other type of case, and I notice that
10 you have served on a jury before for -- you wrote stealing so
11 I assume it was theft.

12 A. It was theft, and I was on a jury for another
13 situation that I -- it was custody of -- child custody or
14 something.

15 Q. And is that the one that settled out of court?

16 A. Uh-huh.

17 Q. You wrote "settled out of court." Okay. How long
18 was the theft or stealing or whatever jury that you were on?
19 Do you recall?

20 A. Oh, dear, I just don't -- I don't have a clue.

21 Q. That's okay, Ms. Lentz. Anything about that
22 particular experience serving on that jury that so affected
23 you from being able to sit on this jury if you were selected?

24 A. No.

25 Q. Because some jurors have bad experiences from prior

1 jury service and say, I just can't do it again. But you
2 don't have that problem?

3 A. No, I don't.

4 Q. Okay. So I'm sure a lot of these principles and
5 areas of the law that we're going to cover were probably
6 covered with you back then, but we're going to go over some
7 of them again.

8 When you filled out the questionnaire, you said that
9 you didn't have any problem presuming the defendant
10 innocent. And as the Judge told you, the defendant as he
11 sits here today is presumed to be innocent. The State has
12 the burden of proof in this case. We must prove the
13 defendant is guilty beyond a reasonable doubt. We must prove
14 each and every element. We're not asking you to give us a
15 leg up. We know what the burden is. We fully expect to meet
16 that burden. And if we don't meet it, then we would expect
17 to you find him not guilty, just as if we do meet it, we
18 would expect you to find him guilty.

19 So can you tell this court and tell us that as the
20 defendant sits here right now, you can give him that
21 presumption of innocence?

22 A. Absolutely.

23 Q. Okay. And another one of the basic rights that the
24 defendant has is the right to remain silent or the 5th
25 Amendment right not to incriminate himself. I see you

1 shaking your head. That goes along with the burden of
2 proof. The defendant, once again, doesn't have to do
3 anything. All he has to do is basically just show up. And I
4 don't anticipate his attorneys doing this, but they could sit
5 there twiddling their thumbs, doodle, do whatever, but again,
6 the burden of proof is still on the State.

7 And some -- human nature is, listen, I want to hear
8 from both sides, but you might not be get to hear from the
9 defendant because he has that right and there could be a
10 million different reasons why he does not testify. He might
11 not be very articulate. He might have a prior criminal
12 history that would be able to be used as far as credibility.
13 But the law says that you would not be able to consider that
14 for any reason. Still keep the burden of proof on the
15 State. But some people say, well, look, if the State got
16 real close, but it was kind of -- you know, there was just
17 that little bit and the defendant didn't testify, that would
18 help push the State over the top. But that's not what the
19 law says. The law is you cannot consider the defendant's
20 silence for any reason.

21 Can you follow that law?

22 A. Absolutely.

23 Q. Okay. Witness credibility. Just because the
24 defendant's presumed to be innocent doesn't mean that he's
25 presumed to be a truth teller. Some prospective jurors say,

1 well, since he has the right to remain silent and no one can
2 force him to take the stand, if he does take the stand, then
3 I'm going to give him a little bit of a leg up because, look,
4 he's getting up there so he must be kind of truthful and so I
5 might give him, you know, a little bit more credibility than
6 any other witness. But what the -- how do you feel about
7 that?

8 A. I don't think that's the case. I think it's usually
9 a strategy, you know, that legally is used.

10 Q. Okay. So you could start the defendant off on the
11 same footing as any other witness that testifies?

12 A. Right.

13 Q. On your questionnaire you had said as far as -- and
14 this goes to credibility of witnesses, also. Police officers
15 are people of authority to be respected. Some people say,
16 and most of us were brought up to trust officers, believe
17 police officers, but when it comes to their testimony,
18 they're to be judged just like any other witness. You don't
19 give them a leg up or believe them just because they are a
20 police officer, because they're humans first and obviously
21 have the job of a police officer.

22 Can you wait and listen to what every witness says,
23 start them all off on equal footing, including police
24 officers, and then determine whether or not you choose to
25 believe all, part, or none of what they say?

1 A. Yes, I do.

2 Q. Okay. So you're not going to automatically give a
3 police officer a leg up just because they're a police
4 officer?

5 A. No.

6 Q. Okay. Ms. Lentz, let's look at the special issues
7 over here. Well, let me go back for a minute. As I said,
8 the burden of proof, we must prove our elements to you beyond
9 each -- each and every element to you beyond a reasonable
10 doubt. And you've got the indictment there in front of you.
11 And since you have sat on a criminal jury before, you know
12 that the State must prove each and every one of those. And
13 as I said before, each element is just as important as any of
14 the other. And if we don't prove one of those elements to
15 you beyond a reasonable doubt, you must follow your oath and
16 find the defendant not guilty.

17 Let's take a farfetched example, but say we prove
18 everything to you but that it occurred in Dallas County. For
19 one reason or another we just forgot to ask what county it
20 was in or it was proved that it was in Tarrant County. We
21 proved that -- everything else, it was the defendant, had the
22 specific intent to kill, did it by shooting with a gun or
23 drowning in water, that it was during the course of a robbery
24 or kidnapping, proved everything else except Dallas County.
25 The Judge would tell you that if we did not prove Dallas

1 County beyond a reasonable doubt, you would have to find the
2 defendant not guilty. Some people consider that a
3 technicality. But that is part of the burden of proof that
4 we have taken upon our shoulders to prove.

5 Could you, as hard as it might be and distasteful as
6 it might be and you might be very angry at us for screwing
7 that up and we probably wouldn't have our jobs anymore if
8 that were the case, too, but could you follow your oaths and
9 follow the law and find the defendant not guilty even if we
10 didn't prove the county or something like that?

11 A. I believe so.

12 Q. Okay. Because there are times when jurors have --
13 have a moral dilemma between what the law says and what their
14 conscience says they should do. But in order to be a
15 qualified juror, you have to be able to set aside your
16 personal feelings and follow the law that the Judge gives you
17 and the oath to a true verdict render according to the law
18 the evidence.

19 Are you the type of person that you think you have
20 the moral and mental discipline to do that?

21 A. Yes, I do.

22 Q. Okay. Now, let's look at these special issues. You
23 have already found the defendant guilty of capital murder.
24 You have already found that he's had the specific intent to
25 kill. And as we said, the murder plus. In this particular

1 case we've alleged that it's plus, that during the commission
2 of a robbery or kidnapping.

3 Now, as the Judge told you in Special Issue Number
4 1, you have to presume that that should be answered no. The
5 State must prove to you beyond a reasonable doubt that it
6 should be answered yes. This is what we call the future
7 dangerousness question. A lot of people say, well, if I've
8 already found him guilty of capital murder, I'm automatically
9 going to answer that yes. If I already found that he
10 specifically intended to kill someone and it was during the
11 course of a robbery or capital -- or a kidnapping, then I'm
12 going to think they're always going to be a future danger.

13 However, the law says, no, wait a minute. You've
14 got to stop. You've got to re-examine the evidence, and also
15 there's a lot of evidence that doesn't come in during the
16 guilt/innocence phase that come in during the punishment
17 phase, such as prior criminal history, character evidence of
18 the defendant, different things like that. So you would have
19 additional information that you might not have had during the
20 guilt/innocence phase. So that's why it says wait, you've
21 got to re-examine.

22 Can you do that? Or are you one of the type of
23 people who's going to automatically answer it yes just
24 because you've already found them guilty?

25 A. I don't have a problem with that.

1 Q. Okay. So you can presume it should be no --
2 answered no and you would require the State to prove that it
3 should be answered yes beyond a reasonable doubt?

4 A. Right.

5 Q. Okay. When you're looking at Special Issue Number
6 1, Ms. Lentz, what types of information or evidence, and
7 don't worry about whether it's legally admissible or not, but
8 just what types of evidence or information would you like to
9 hear in order to be able to answer Special Issue Number 1?

10 A. Well, I think it would depend a great deal on prior
11 history, as far as behavior and conduct. That's about --
12 that's what I think --

13 Q. Okay.

14 A. -- you know, you'd want to know the prior history of
15 what had been done and --

16 Q. And that's what a lot of prospective jurors tell me
17 us, Ms. Lentz. They say, well, really, you're looking at the
18 future as far as this question. You're being -- asking us to
19 kind of predict the future. And a lot of people say the best
20 predictor of the future is past, past behavior. You may have
21 a case where the defendant has been a fine upstanding
22 citizen, has never been in trouble with the law before, has
23 been a pillar of the community, a minister in his church,
24 different things like that. And this is the first offense
25 that that person has ever been -- has ever committed. But

1 you found him guilty of capital murder. You may say that the
2 offense alone, once you do a re-examination, is still
3 sufficient to say, yes, he will be. Or you may have a
4 defendant who has been in and out of trouble with the law,
5 has been in the system, the system has tried or has given him
6 many opportunities to try and rehabilitate himself.

7 Are those some of the types of things you're talking
8 about as far as background and conduct?

9 A. Yes, that's correct.

10 Q. Okay. Now, when you're looking at Special Issue
11 Number 1, Ms. Lentz, you see that the legislature there used
12 the term "probability," whether there is a probability that
13 the defendant would commit criminal acts of violence. You
14 notice there that the legislature didn't use the word
15 "certainty." They also didn't use the word "mere
16 possibility" or "chance." Most people say probability is
17 more likely than not, 51 percent. Kind of like if we were
18 talking about the weather, 51 percent chance of rain is more
19 likely than not. If it was 50/50, that would just be an even
20 chance. If it was something less than that, it would be just
21 a mere possibility. Some people say anything over zero
22 percent is a probability.

23 However, the legislature there specifically used the
24 word "probability," not possibility or mere chance. Do you
25 agree with the fact that it is or with the definition

1 basically because the Judge isn't going to give you a legal
2 definition of probability, that it's more likely than not, or
3 51 percent or higher?

4 A. Yes, I do.

5 Q. Okay. So it's not just a mere chance or
6 possibility?

7 A. Excuse me.

8 Q. Is that how you see it?

9 A. Right, uh-huh.

10 Q. Okay. Criminal acts of violence. When you hear
11 that or read that term, what comes to mind as far as Special
12 Issue Number 1, Ms. Lentz?

13 A. Well, it seems like it goes without saying, kidnap,
14 murder, say brutal beatings, let's see -- say a robbery that
15 goes awry and it becomes a more violent situation.

16 Q. Okay. You notice there that the legislature didn't
17 say that we -- that he would commit future murders or future
18 capital murders. They didn't limit it to that. They also
19 didn't just say criminal acts because criminal acts could be
20 anything from jaywalking, traffic tickets, those types of
21 things, but they added that qualifier, criminal acts of
22 violence. A lot of people look at that and say, well,
23 basically that's -- I look at it where it has to basically
24 place another human being in fear of being injured or
25 actually causing some type of injury. Because I may pull out

1 a gun and say, give me your money. I haven't injured you,
2 but have I placed you in fear. Most people would say that's
3 a criminal act of violence, whereas if I just go break into
4 your car and steal your stereo, most people wouldn't consider
5 that a criminal act of violence. You weren't anywhere
6 around.

7 Is that kind of what you are looking at or thinking
8 of when you look at Special Issue Number 1?

9 A. That's correct, because I -- as you were talking, I
10 had already thought to myself, something that causes bodily
11 harm.

12 Q. All right. How about if it's just the threat of
13 bodily harm? Because an aggravated robbery might just be a
14 threat of bodily harm without any actual bodily harm being
15 caused. Pulling a gun out and pointing at you but not
16 pulling the trigger.

17 A. Well, that's still violent.

18 Q. Okay. And that's what I'm -- I'm just asking. I
19 mean, you know -- so, well, no, and the Judge isn't going to
20 give you a definition of what that is either, so we're just
21 trying to find out where you fall as far as different people
22 and we've heard different things, you know. Some people say,
23 no, it's got to be another capital murder or another murder.
24 But you're saying basically if it threatens another with
25 bodily injury or actually causes, that's what you're kind of

1 thinking of when you're looking at that term?

2 A. That's right.

3 Q. Now, look at society. When you read that term
4 "society," what -- what comes to your mind when you're
5 looking at that?

6 A. Well, it's the world that we live in.

7 Q. Okay. And that's what most people say. Now, there
8 are some people who say, well, wait a minute, you are
9 already -- the defendant is already going to be sentenced to
10 life in the penitentiary when you've gotten to Special Issue
11 Number 1 here, because you've already found him guilty of
12 capital murder, and so he's looking at life in the
13 penitentiary. And as the Judge told you, that means 40
14 calendar years. So some people say society should be limited
15 to other people in the penitentiary because that's where the
16 defendant is going to be serving his time, but the
17 legislature didn't -- does not put that burden on us.

18 But let me ask you this. Do you think that other
19 people who are confined in the penitentiary, guards,
20 chaplains, nurses, could be secretarial staff, and other
21 inmates also have a right to be free from having criminal
22 acts of violence perpetrated upon them?

23 A. Now, as I understand it, you're asking do I think
24 that they -- they should certainly have the same rights that
25 you or I do.

1 Q. Okay.

2 A. Even though they're working there or even though
3 they're an inmate.

4 Q. Okay. Okay. And that's what I'm getting at because
5 some people say, well, look, we -- the State should have to
6 prove that he's going to be a continuing threat to society.
7 And when you look at society, that should only include people
8 in the penitentiary because that's where the defendant is
9 going to be. The legislature doesn't -- doesn't require
10 that. Other people say -- have you heard of Texas 7?

11 A. Yes.

12 Q. Okay. Some of those people were serving life
13 sentences in the penitentiary. Obviously, they were able to
14 get out, came up here to Irving, and have been accused of
15 killing an Irving officer. Other people say society should
16 not be limited just to people in the penitentiary, but it
17 should be -- it should include everyone, anyone -- anywhere
18 that the defendant may find himself or anyone the defendant
19 may come in contact with either in or out of the
20 penitentiary.

21 How do you feel about that, Ms. Lentz?

22 A. Well, I'm not real sure what you're actually asking
23 me on that.

24 Q. Okay. I think --

25 A. Because I agree with your assessment.

1 Q. Basically what I'm asking is, are you going to limit
2 society as far as Special Issue Number 1 goes strictly to
3 people in the penitentiary, that he's going to be a future
4 threat to only people in the penitentiary, or are you going
5 to include everybody, both in and out of the penitentiary?

6 A. I think it should be everybody.

7 Q. Okay. And like I said, the Judge isn't going to
8 give you a definition of what society should be. We're just
9 kind of trying to find out where you come on that issue.

10 Do you have any questions about Special Issue Number
11 1?

12 A. No, I don't.

13 Q. Okay. Now, let's get down to Special Issue Number
14 2. As the Judge said, a lot of times this is called the
15 mercy question or the safety net. You only get to Special
16 Issue Number 2 if you've already found the defendant guilty
17 of capital murder and you have found that he's going to
18 basically be a future danger.

19 Now, some people say, okay, if I've already found
20 that he intentionally took someone else's life during the
21 course of a robbery or kidnapping in this particular case,
22 and I've already said he's going to be a future danger, then
23 I am always going to answer Special Issue Number 2 no so he
24 will get the death penalty. Because I'm not ever going to
25 give him a chance to perhaps get out and if I already think

1 he's going to be a future danger. But what the law requires
2 you to do, Ms. Lentz, is to -- regardless of what you have
3 done in the past, regardless of the fact you've already found
4 him guilty, and you have found that he is in all probability
5 going to be a future danger, is step back, basically forget
6 that you did those two things, and re-examine all of the
7 evidence again and look and see whether or not there is
8 anything within that evidence that would warrant you changing
9 a death sentence back to one of life. Because when you get
10 down to Special Issue Number 2, the defendant is looking at a
11 death sentence. And Special Issue Number 2 basically says
12 re-examine all of the evidence and is there something that
13 you believe warrants changing that death sentence back to one
14 of life.

15 Now, when you get down to Special Issue Number 2,
16 there is no burden of proof. The State does not have to
17 prove it should be answered no. The defense does not have to
18 prove it should be answered yes. Neither side has the burden
19 of proving it should be answered one way or another. You
20 just examine the evidence, and then call it like you see it.

21 Do you think that you have the discipline to be able
22 to do that?

23 A. I do.

24 Q. Even if you've already found that he's going to be a
25 future danger and you've found him guilty of capital murder?

1 A. I do.

2 Q. Okay. Some people -- as the Judge said, you're not
3 going to have a laundry list of what mitigating circumstances
4 are. It's whatever you believe it is. You may believe
5 something is mitigating. Another person may think it's
6 aggravating. Another juror may say, well, it doesn't really
7 have any bearing one way or another. I want to talk about a
8 couple of them that the Judge had talked about earlier.

9 Age. In Texas a person has to be 17 years of age
10 before he or she can -- before the State of Texas can seek
11 the death penalty against that person. Some people say the
12 young age of a defendant could be mitigating. Other people
13 say, no, once they've reached the age of accountability, they
14 understand the consequences of their actions, age really
15 doesn't play any factor as far as I'm concerned.

16 How do you feel about that, Ms. Lentz?

17 A. Age has nothing to do with it --

18 Q. Okay.

19 A. -- as far as I'm concerned. Because there's too
20 many that do things and say I'm not 17 yet.

21 Q. Okay.

22 A. I've heard them say it.

23 Q. How about drug or alcohol use or abuse? Some people
24 say it's a disease and therefore should be a mitigating
25 circumstance. Other people say, no, it's a conscious

1 choice. It's a conscious decision. Never going to consider
2 it as mitigating. Other people say, well, I'd really want to
3 know some of the facts and circumstances around it. Was this
4 the first time the defendant had ever used alcohol or drugs?
5 Perhaps he didn't know how it affected him and that's when he
6 went out and committed the crime. Or had this person used
7 alcohol or drugs in the past, knew how it affected him, had
8 even talked to people about how drugs or alcohol affected
9 him, and then he goes out and commits a crime?

10 How do you feel about drug or alcohol use? Do you
11 think it's a choice? Do you think it's a disease?

12 A. Well, it's two of those things that you said. It's
13 a disease. It's also a choice.

14 Q. Okay.

15 A. In my -- the way I feel about it.

16 Q. So do you think it's a conscious choice when you
17 first begin using it?

18 A. Yes.

19 Q. That perhaps -- okay. Do you think that people can
20 be rehabilitated?

21 A. Yes, I do.

22 Q. Do you think all people can be rehabilitated?

23 A. No.

24 Q. What do you think what might make the difference?

25 A. The support group that they have.

1 Q. Okay. Do you believe that the person has to want to
2 be rehabilitated?

3 A. Yes, definitely.

4 Q. Would it make a difference to you whether the person
5 had been offered opportunities at rehabilitation and whether
6 they had tried to avail themselves of it or basically just
7 thumbed their nose at it?

8 A. That would definitely be an influence to me
9 because --

10 Q. Okay.

11 A. -- you know, if they had the opportunity and did not
12 avail themselves of it, well --

13 Q. Okay. How about mental and physical or sexual
14 abuse? Some people say that can be a mitigating
15 circumstance.

16 Have you ever known anyone who's been physically or
17 sexually abused or claimed to have been?

18 A. Well, I -- yes.

19 Q. Okay. Did you have an opportunity to judge the
20 credibility of that claim or believability?

21 A. I didn't really examine it to that degree. I had
22 only known one person.

23 Q. Okay.

24 A. And that's a very -- not a real close acquaintance.

25 Q. Okay. Do you believe, Ms. Lentz, that there are

1 people who can make false claims about sexual or physical
2 abuse?

3 A. Oh, I do.

4 Q. Would it make a difference to you, or would you want
5 to know if you were going to look at it as perhaps a
6 mitigating circumstance or not when the claim was originally
7 made, how close to the alleged abuse was it, was the person
8 consistent in their claims of abuse? In other words, was
9 their story the same every time they told it, or did it
10 differ, depending upon who they were talking to? When was
11 the initial outcry? Was the person under legal accusation or
12 looking at some type of legal punishment when the original
13 outcry came out?

14 Are those some of the types of things that you would
15 want to know?

16 A. Yes.

17 Q. How about mental illness? Have you ever known
18 anyone to be mentally ill?

19 A. I don't believe -- Alzheimer's is not included in
20 that, or is it?

21 Q. If you include it, that's up to you.

22 A. I mean, I don't think it really qualifies.

23 Q. Okay.

24 A. I mean, it's a disease.

25 Q. All right. Okay. Do you -- like physical or sexual

1 abuse, do you believe that people could make false claims of
2 mental illness?

3 A. Oh, but of course.

4 Q. Okay. And are -- would you also want to know the
5 history or background about that, too, before you made a
6 decision?

7 A. Yes.

8 Q. Okay. Ms. Lentz, just one other thing I wanted to
9 ask about real quickly. I notice that you had said in your
10 questionnaire that you had -- some 15 years ago you had
11 personally been through some substance abuse; is that
12 correct?

13 A. That's correct.

14 Q. And I don't mean to get real personal or prying or
15 anything was it alcohol or some prescriptions, or can you
16 tell us what it was?

17 A. It was alcohol.

18 Q. Okay. And -- but you have been clean for -- or
19 sober for 15 years; is that correct?

20 A. Uh-huh.

21 Q. I'm sorry. You have to answer yes or no for the
22 court reporter.

23 A. Oh, I'm sorry. I'm sorry. Well, I wouldn't say
24 that I have been -- no, I have not been sober for 15 years.

25 Q. Okay.

1 A. I've not done that, but I was -- I went in and went
2 through detox and was in there a month. And I was
3 probably -- I probably stayed sober about three years, and
4 then I still -- I still socially drink every now and again.

5 Q. Okay. Anything about that particular experience
6 that would affect you one way or another if drug or alcohol
7 use or abuse was brought up as a mitigating circumstance or
8 somehow brought up in this particular case?

9 A. Well, I think the more we know about anything -- I
10 mean, we have to use our past experience in our judgments, so
11 I'm not real sure how to answer that.

12 Q. Okay. Well, basically you would have to set your
13 past experience aside. You couldn't tell other jurors your
14 own personal experience. They have to base and you would
15 have to base your verdict on the evidence that's presented
16 within the courtroom.

17 A. Right.

18 Q. Could do you that?

19 A. Yes.

20 Q. Okay. Ms. Lentz, have I thoroughly confused you?

21 A. No. It's very -- it's very interesting.

22 Q. Okay. Do you have any questions?

23 A. I don't believe so. Not at this time. I'll have a
24 thousand later.

25 Q. Okay. Ms. Lentz, thank you very much.

1 MS. MILLER: I pass the juror.

2 THE COURT: Ms. Lentz, you need to -- nope,
3 nope, you're only halfway through.

4 VENIREPERSON: Oh.

5 THE COURT: Unless you need to take a rest
6 room break or --

7 VENIREPERSON: Oh, no, no. I'm fine.

8 THE COURT: If you do, we'll be more than
9 happy to accommodate you.

10 Ms. Balido, will you be questioning Ms. Lentz?

11 MS. BALIDO: I will, Judge.

12 THE COURT: Do you have any questions for
13 her?

14 MS. BALIDO: I do.

15 THE COURT: I'm sure you do. You may
16 continue.

17 Cross-Examination

18 By Ms. Balido:

19 Q. Ms. Lentz, as the Judge told you, my name is
20 Jennifer Balido. And along with Michael Byck and Jane Little
21 who is the other attorney, we represent Mr. Murphy here.
22 Okay?

23 I'm just going to ask you some questions about some
24 of the things that you talked about with Ms. Miller and also
25 some things on your questionnaire and just some other things

1 about -- about this case specifically.

2 First, you said that you watch a lot of TV. What
3 kind of TV do you watch?

4 A. Well, not a daytime soap opera type thing. Usually,
5 let's see -- oh, let me just go down the list, JAG.

6 Q. Okay.

7 A. That jet pilot deal.

8 Q. Okay.

9 A. Let's see, Law & Order.

10 Q. My favorite.

11 A. Millionaire, of course.

12 Q. Yes.

13 A. Walker Texas Ranger.

14 Q. Uh-huh.

15 A. West Wing. Oh, I can nearly tell you the nights.

16 Q. You're kind of going over -- I'm addicted to 9
17 o'clock TV because my kids are in bed by then. So Law &
18 Order. You know, West Wing, I have to make my husband put
19 them to bed, that kind of stuff, so you and I are kind of on
20 the same page watching TV.

21 And you also mentioned in your questionnaire that
22 you had kind of kept up with the O.J. Simpson case.

23 A. Yes, I did. I watched it -- I missed very little of
24 it at that time because at that point I had been just been
25 down sized from my job.

1 Q. Right.

2 A. And of course it came along and there was, you
3 know, -- it was great, I watched it, you know, the whole
4 thing.

5 Q. I was on maternity during that trial, so I got to
6 watch a lot of it, too, when I was at home with my baby.
7 What did you think about that trial, and do you think that he
8 should have been found guilty, or do you think that he --
9 that the jury made the right decision in that case?

10 A. Well, I think they made the right -- I mean, the
11 decision that they were -- that they should have.

12 Q. Okay.

13 A. Under the circumstances.

14 Q. Okay. So you didn't have a problem with them
15 finding him not guilty under the circumstances?

16 A. Well, I -- that's true. I felt personally that
17 perhaps he was involved in some way, but that was only a
18 personal feeling.

19 Q. Okay. All right.

20 A. It wasn't -- you know, I guess the jury.

21 Q. Okay. When we talked -- when you were talking with
22 Ms. Miller, you were taking about all sorts of different
23 aspects of the law and things. And you said on your
24 questionnaire that you felt like that under certain
25 circumstances the death penalty should be used and that --

1 I'm assuming the person convicted of capital murder and
2 sentenced to death should not be a burden on taxpayers for
3 years. And then you also kind of -- well, first let me ask
4 you, have you read anything or -- that's kind of made your
5 opinion this way?

6 A. Well, I must have read certain things that have made
7 me come to this conclusion.

8 Q. Right.

9 A. I couldn't say specifically what.

10 Q. Okay.

11 A. But just the fact that people are in the prison for
12 all those many years, they have no life, and the taxpayers --
13 our prisons are over crowded.

14 Q. Right.

15 A. And it is a tremendous expense.

16 Q. Okay. And are you talking specifically about people
17 that are on death row and waiting for all their appeals to be
18 exhausted, or are you just talking about so many people that
19 are just in there for other crimes that are incarcerated in
20 jail?

21 A. I'm really speaking specifically of the ones on
22 death row and also to a degree regarding the ones that are in
23 there for the rest of their life.

24 Q. Right. So you think probably that the death penalty
25 should be used on some other cases instead of life in prison

1 or how -- what do you kind of think about that?

2 A. Well, I think would depend on the situation.

3 Q. Okay. Let me kind of just go over a few things
4 about what we've been talking about here. And I'm going to
5 start off just by -- when we're talking about the part of the
6 trial, the guilt/innocence part of the trial where the
7 State's got to prove beyond a reasonable doubt that Mr.
8 Murphy is guilty of this offense. Okay. And when you talked
9 to Ms. Miller, you said that you could presume the defendant
10 innocent of this charge, unless and until the State proved
11 its case beyond a reasonable doubt; is that right?

12 A. Right.

13 Q. Okay. And then I guess what I kind of want to know
14 is what -- do you have something in your mind that -- where
15 you can kind of define what proof beyond a reasonable doubt
16 means to you? I know that's kind of hard, and it's one of
17 those things that you just kind of -- it's kind of your gut
18 instincts kind of deal. But let me kind of tell you this
19 this way. There's not a definition for beyond a reasonable
20 doubt. We used to have one, and the court took it away for
21 whatever reason. But basically what proof beyond a
22 reasonable doubt is not -- okay -- I can't really tell you
23 what it is, but what it is not is when people are fighting
24 about money, somebody suing somebody else over in the civil
25 courthouse, they've got to prove their case by a

1 preponderance of the evidence, something like more likely
2 than not. Okay. 51 percent maybe. If the State of Texas
3 was trying to take away children from a family because of
4 neglect or some reason like that, they have to prove their
5 case by a clear and convincing evidence which is more than a
6 preponderance, less than beyond a reasonable doubt, but we're
7 talking about something real important. We're talking about
8 where these children are going to live. If they're going to
9 live with their parents or not. And some people say that's
10 about 75 percent.

11 Beyond a reasonable doubt is something higher than
12 that. Okay? It's higher than a preponderance. It's higher
13 than clear and convincing, and it's up to a reasonable doubt
14 and beyond a reasonable doubt. Okay. And they've got to
15 prove to you every single thing that's in the indictment, as
16 Ms. Miller told you. If they don't prove Dallas County,
17 State of Texas, you have to find him not guilty.

18 And you said you didn't have a problem with that,
19 correct?

20 A. That's correct.

21 Q. Okay. If they don't prove -- let's say that -- like
22 in this indictment, they've alleged that -- that Ms.
23 Cunningham was either killed by being shot in the head or
24 drowned in water. And let's say they proved stabbing
25 instead. And it's still -- it's a technicality, but you'd

1 still have to find him not guilty under the law.

2 Do you understand that?

3 A. Yes, I do.

4 Q. Okay. How does that make you feel that the law is
5 so technical that way?

6 A. Well, I'm sure there is a -- there's such a fine
7 line in there. And I know that you have to have rules.

8 Q. Right.

9 A. And unfortunately, sometimes they don't always play
10 to the way you would like things.

11 Q. Right.

12 A. So you have to just go by the line and go right down
13 the line with it.

14 Q. Okay.

15 A. And so I have no problem with that.

16 Q. Okay. All right. Let me ask you and talk to you a
17 little bit about -- in that indictment it says that the
18 State's got to prove that Mr. Murphy -- Mr. Murphy
19 intentionally caused the death of Ms. Cunningham. And when
20 we're talking -- there are a lot of different ways that you
21 can kill somebody, unfortunately. You can do it by
22 negligence, by not paying attention to what you're doing, do
23 it kind of by accident. You can do it through -- let's say
24 by negligence because you were intoxicated. You might have
25 been driving a car, maybe killed somebody. You didn't intend

1 to kill that person, but your actions were such that you
2 should have known better basically.

3 There's -- as I said, a bunch of different ways to
4 do that, but what we're talking about in this case is we're
5 talking about the specific intent to kill and the State must
6 prove that Mr. Murphy had the specific intent to kill, if
7 they can prove that. And what we're talking about when we're
8 talking about specific intent to kill is basically this.
9 Let's say that I've just had it with Mr. Byck. Okay. We've
10 been at this a long time, and he's just driving me out of my
11 head. And so I decide to bring a gun into the courtroom. I
12 have bought the gun. I have bought the bullets. And then he
13 just does one more thing, he whispers in my ear one too many
14 times and I pull out my gun and I put it up to his chest and
15 I shoot him.

16 Now, at that time I did not intend to scare him.
17 Okay. I didn't shake it at him or anything like that. At
18 that time I did not intend to wound him because of my
19 actions. I was doing everything that I could to cause the
20 death of this individual, and I had the specific intent to
21 kill him. So that's the kind of specific intent that we're
22 talking about that the State must prove to you beyond a
23 reasonable doubt that Mr. Murphy had when he -- or if he
24 committed this offense.

25 Do you understand that?

1 A. Oh, yes.

2 Q. Okay. And do you think that you can hold the State
3 to its burden of proof?

4 A. Yes, I do.

5 Q. Okay. Just a couple of more things about -- when
6 we're talking about the guilt/innocence phase of this trial.
7 Do you think -- and I think that you are a very honest woman
8 and I think that you have laid out what you believe and that
9 you can follow the law. And I think that you've done that
10 very clearly.

11 Would your ability to be fair and impartial in this
12 case change if you learned from the evidence that the victim
13 in this case was an 80-year-old woman?

14 A. The -- her age shouldn't have anything at all to do
15 with it.

16 Q. Okay. And basically I ask this question because
17 sometimes people hold older people in a little different
18 esteem than they do other people.

19 A. Oh, I understand.

20 Q. Yes, and so -- and this -- so we kind of ask that
21 question just to make sure. You know, we've had a couple of
22 jurors that had problems with that.

23 And let me also ask you, when you look at this
24 indictment and you see what he's accused of. You see that
25 he's accused of causing the death of an individual, Ms.

1 Bertie Lee Cunningham, by either shooting her in the head or
2 drowning her in water in the course of a kidnapping or a
3 robbery. Now, we can't go into the specifics of the case,
4 Ms. Lentz, but just reading that indictment when we're
5 talking about shooting someone in the head and/or drowning
6 them in water, you can imagine that the pictures in this case
7 might be of a graphic nature.

8 And so do you think that you can look at these
9 pictures and look at them for their evidentiary value and
10 whether or not they prove anything or whether or not they
11 prove what the State says they prove, without being swayed by
12 the emotion of them or the graphic nature of them?

13 A. I don't have a problem with it. I don't believe
14 that I would.

15 Q. Okay.

16 A. I watch that CSI on TV all the time.

17 Q. Right.

18 A. And I realize these things do happen. And I have
19 never been a person with a weak stomach or --

20 Q. Okay. All right. Let me also ask you in specifics
21 to testimony and evidence, do you believe that eyewitness
22 testimony is infallible?

23 A. No.

24 Q. Okay. And I think that a lot of these shows that
25 you watch that I watch -- my husband can't believe that I do

1 this for a living and I go home and watch all this stuff on
2 TV. But I think that there are some cases like that and
3 cases also in the news where you see that sometimes people
4 that -- you know, I think five different people could
5 describe an event five different ways.

6 A. Absolutely.

7 Q. Okay. Let me go ahead and move on to -- well, let
8 me kind of start -- finish up with this on guilt/innocence.
9 If the State proves its case beyond a reasonable doubt that
10 Mr. Murphy is guilty of capital murder, then we move on over
11 to the special issues when we're dealing with capital
12 murders, to decide whether or not life or death is
13 appropriate. If the State fails to prove the part of the
14 indictment that alleges the kind of secondary offense, if
15 they prove that Mr. Murphy caused the death of this
16 individual, but they fail to prove that it happened during
17 the course of a robbery or kidnapping, then -- and the
18 Judge -- and the jury finds him guilty of just murder, and
19 just murder sounds weird, but the charge of murder without
20 the underlying offense, then we won't get to the special
21 issues. And what we deal with is we'll deal with the
22 punishment phase of the trial where the range of punishment
23 the legislature has set out is no less than 5 nor more than
24 99 years in the penitentiary or life confinement in the
25 penitentiary. Okay?

1 And the legislature kind of set that up for a reason
2 to kind of have a wide -- you know, 5 to 99 years, that's a
3 lot of leeway there.

4 Do you think that as a juror if you found Mr. Murphy
5 guilty of murder only, that you could consider the entire
6 range of punishment, from 5 years to 99 years or life, or do
7 you think one -- do you think 5 is too low? Do you think
8 life is too high? Or what's your opinion on that?

9 A. Well, I would feel like 5 was far too low.

10 Q. Okay.

11 A. And that it should be much more.

12 Q. Okay. And when we're talking about this, we're
13 talking about -- you know, the intentional causing of the
14 death of an individual, and, you know, it wasn't an accident,
15 it wasn't a mistake, you know, he wasn't legally insane at
16 the time, you know, there's no kind of legal justification,
17 it's just an intentional murder.

18 Do you think that you could ever give 5 years,
19 depending on what the case may be, for an intentional murder?

20 A. Well, if -- you'd have to base it on the -- I mean,
21 I would -- emotionally would be against it, but I would in
22 the other sense realize that it -- the burden of proof lays
23 with the prosecutor.

24 Q. Yes, ma'am.

25 A. And that I would have to go by the evidence and what

1 was done.

2 Q. Okay.

3 THE COURT: Ms. Lentz, let me ask you this.
4 Are you telling me that you're willing to wait and listen to
5 the circumstances, the relationship between the parties, and
6 then decide what the penalty range should be, or are you
7 telling me that regardless, period, as a matter of intellect
8 and conscience, you would never ever consider 5 years, or are
9 you willing to wait and listen to the evidence and then make
10 a determination?

11 VENIREPERSON: I'm not sure I understand
12 exactly. Are you saying -- I'm --

13 THE COURT: Legislature has said the penalty
14 range for murder, not capital murder, but murder, the
15 intentional taking of another human life, no self-defense, no
16 defense of a third party, no necessity, I mean, murder, 5 to
17 99 years or life, optional fine not to exceed \$10,000. The
18 legislature did that 25 plus years ago realizing that there
19 are virtually an infinity of relationships and circumstances
20 that result in a homicide called murder.

21 VENIREPERSON: Right.

22 THE COURT: To accommodate all of those
23 possibilities, the legislature has said, look, here's this
24 vast penalty range to accommodate virtually everything that's
25 under the sun. We are not asking you to hypothecate in your

1 mind a 99-year case or a life or a 5, but to be a qualified
2 juror, must be willing to say, I'll wait until I hear the
3 case and then if I determine it's 5 years, I could do it, or
4 6 or 10 or 20, as opposed to, oh, I could consider on my way
5 home tonight running by the Rolls Royce dealership and buying
6 a Rolls Royce. Oh, I could consider it. Yeah, really. No,
7 not realistically. I'm not talking about that kind of a
8 considering. You know, well, it's out there, but can you
9 seriously give consideration realistically, a realistic
10 consideration to as little as 5 years and do that if you felt
11 the circumstances presented in court obligated you to do so?

12 VENIREPERSON: If I were obligated to do so, I
13 would do so.

14 THE COURT: You haven't closed your mind to
15 it?

16 VENIREPERSON: No.

17 THE COURT: Counsel may continue.

18 Q. (By Ms. Balido) So, Ms. Lentz, if you thought the
19 case was worth -- if you thought in your heart of hearts the
20 case was worth 5 years, you wouldn't have a problem giving 5
21 years?

22 A. I don't believe that I would.

23 Q. Okay. Let me -- let me go ahead and talk to you a
24 little bit about if the State proves its case that it's
25 actually capital murder, okay, that he's guilty of actually

1 capital murder. We had a situation up until this past year
2 that in the situation where someone is found guilty of
3 capital murder, obviously the two choices are either life
4 confinement in the penitentiary or the death penalty. And I
5 think everybody kind of knows what the death penalty is.
6 It's death by lethal injection. And in Texas, you know, you
7 can't turn on the TV without hearing that somebody else is
8 being put to death. So it's a reality in Texas. But what
9 the problem used to be is that nobody knew what life
10 confinement meant.

11 THE COURT: Jurors didn't know.

12 Q. (By Ms. Balido) Jurors -- jurors didn't and --

13 THE COURT: We couldn't tell them.

14 Q. (By Ms. Balido) The legislature would not allow us
15 to tell them what life -- life confinement in the
16 penitentiary meant. Until --

17 THE COURT: If the legislature still had their
18 way, we wouldn't. But the courts have said, look, we're
19 going to be honest with jurors, if they're going to make
20 these life and death decisions, we want them to be informed.
21 We have a right to know.

22 Go ahead, Ms. Balido.

23 Q. (By Ms. Balido) So now we're allowed to tell the
24 jurors that if someone is convicted of capital murder and
25 sentenced to life confinement in the penitentiary, then what

1 that means is it's confinement for 40 calendar years until
2 the possibility of parole. He does every single day of that
3 40 years. And even after that, he's got to go through the
4 parole process before parole might be able to be granted to
5 him or not.

6 Knowing that, do you think when we're talking about
7 capital murder, we're talking about the intentional killing
8 of someone during the course of in this case a robbery or a
9 kidnapping, do you think both the death penalty and life
10 confinement, 40 calendar years, are both appropriate
11 punishments for this type of crime?

12 A. That's a hard question to answer because I really
13 feel that it should be the death penalty.

14 Q. Okay. And not have the possibility of life
15 confinement for a capital murder?

16 A. No, I think it should be the death penalty.

17 THE COURT: So you don't think we should
18 consider the special issues?

19 VENIREPERSON: Well, then -- that's what I was
20 saying, it was hard to answer that.

21 Q. (By Ms. Balido) Uh-huh --

22 A. -- because it would depend on how the circumstances
23 were presented and if the prosecution was able to fulfill
24 it's obligation in the indictment. I don't really know where
25 to go with that except that if someone kills someone

1 intentionally and with no -- I mean, this is hard to say, but
2 I feel very strongly about the death penalty for somebody who
3 kills someone else.

4 THE COURT: Defense may continue.

5 Q. (By Ms. Balido) So if I'm understanding what you're
6 saying, Ms. Lentz, if you find someone guilty of capital
7 murder, you think that they should get the death penalty?

8 A. Yes.

9 Q. Okay. Do you think they should get the death
10 penalty for just a murder, not a murder plus, not in the
11 course of a kidnapping or a robbery or an arson or something
12 like that, but just all murders?

13 A. Well, the circumstances would make a difference.

14 Q. Okay. But on a capital murder, if he's found guilty
15 on that indictment, you think he should get the death
16 penalty?

17 A. Yes.

18 Q. Without any consideration of the special issues?

19 A. Well, I know we would have to do that; isn't that
20 correct?

21 Q. That is correct.

22 A. But I mean as far as my feeling about it, the way I
23 feel, I feel it should be the death penalty.

24 Q. Okay. So after you've already found him guilty of
25 capital murder, are you saying that you would want us to

1 prove to you that it should be life and not death after you
2 found him guilty of capital murder?

3 A. Now, you're asking me -- that you -- you're asking
4 me if you would have to come back and try to convince me
5 during the sentencing part of it --

6 Q. Uh-huh.

7 A. -- that you would have to convince me of a life
8 sentence rather than a death sentence; is that what you're
9 saying?

10 Q. Yes, that's what I'm asking.

11 A. Well, I guess I would have to see something because
12 I feel very strongly about the death penalty. I do.

13 Q. Well, and I appreciate your honesty.

14 MS. BALIDO: Any further questions, Judge?

15 THE COURT: Ms. Madore, you may excuse the
16 juror. The attorneys willing make representations to the
17 Court. I will notify you whether or not you remain under
18 consideration. If you would excuse yourself with Ms. Madore
19 momentarily.

20 (Venireperson excused from courtroom.)

21 (State no challenge for cause - Ms. Lentz)

22 MS. MILLER: The State has no challenge, Your
23 Honor.

24 (Defense challenge for cause - Ms. Lentz)

25 MS. BALIDO: Defense would challenge her for

1 cause based on her answer to the last few questions.

2 (Challenge for Cause Granted)

3 THE COURT: Defense challenge for cause
4 granted.

5 (Recess of proceedings.)

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Reporter's Certificate

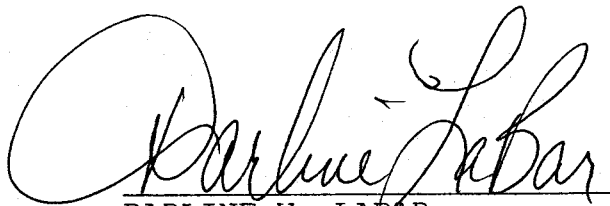
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 19th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

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